# JUDICIAL EXPENSES OF THE GOVERNMENT OF THE UNITED STATES.

## LETTER

FROM

## THE SECRETARY OF THE TREASURY,

TRANSMITTING,

*In obedience to a resolution of the 19th May, 1842, a report in relation to the judicial expenses of the Government.*

DECEMBER 23, 1842.

Referred to the Committee on the Judiciary.

TREASURY DEPARTMENT, *December* 23, 1842.

SIR: Pursuant to a call of the House of Representatives, under date of the 19th of March, 1842, in reference to the "judicial expenses of the Government, and the laws and usages under which they are made," I have the honor herewith to transmit a report thereon, prepared by the Solicitor of the Treasury, accompanied by a projet of a bill "to fix, ascertain, and regulate fees and costs to be allowed to the attorneys, clerks, and marshals of the United States, and to jurors and witnesses in the courts of the United States, and for other purposes."

I am, sir, respectfully, your obedient servant,

W. FORWARD,
*Secretary of the Treasury.*

Hon. JOHN WHITE,
*Speaker of the House of Representatives.*

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES,
*March* 19, 1842.

Whereas the judicial expenses of the Government have of late years been greatly augmented, so that the appropriation for this purpose, which, in 1824, was but two hundred thousand nine hundred dollars, in 1840 had risen to the sum of four hundred and seventy-one thousand dollars; and it is believed that an investigation of the subject, carefully conducted, would lead to a detection of defects in the law, and abuses in its exercise, which, if properly corrected, would save annually to the United States a

large sum of money, without in any degree impairing the efficient action of this important branch of Government: and whereas such an investigation, so to be conducted, that while it results in retrenchment of expenditure, may not interfere with the wholesome action of the Judiciary, will require the active co-operation of different departments of the Government, and a contribution of knowledge and experience from every practicable quarter, and may call for more time and minuteness of examination into local State laws, &c., than can be given to the subject by a committee of Congress:

*Therefore, resolved*, That the Secretary of the Treasury, with the agency and assistance of the proper functionary of the Treasury Department, is hereby authorized and required to examine into the judicial expenses of the Government, and the laws and usages under which they are made, in the District of Columbia, and in the several States and Territories of the United States, and to report to this House wherein these expenses may be lessened without prejudice to the public interest, and any defect which may exist in the said laws and usages, for the taxation, allowance, and expenditure of such judicial expenses, inquiring and reporting:

1. What amendments, if any, are required in the law of costs, either as to the amount of fees and costs charged, the manner of allowance or taxation, under what circumstances the same should be paid by the Government, or in any other particulars whatever.

2. Whether any, and if any, what, provision should be made by law to regulate the nature, allowance, and payment of the contingent expenses of the courts, or the contingent expenses which should be paid out of such judiciary fund; and especially that provision be made to abolish all per diem allowance for officers; and whether any alteration can be made advantageously in the length of time occupied in the actual sessions of the court, and in the unnecessary attendance, from day to day, of jurors and witnesses.

And the said functionary is hereby authorized and required to accompany his report with such specific plans as may in his judgment furnish a remedy for the mischiefs which exist, or are supposed to exist, in the present system.

*Be it further resolved*, That the judges of the courts, their clerks, the district attorneys and marshals, are hereby required to furnish to the said functionary such information as he may ask them to give, to enable him to execute the trust committed to him by these resolutions.

*And be it further enacted*, That the report be made as speedily as circumstances will permit.

Attest: M. ST. CLAIR CLARKE, *Clerk.*

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*Report of an examination into the judicial expenses of the Government, and of "specific plans" or a bill for the remedy of "existing mischiefs," prepared under resolutions of the House of Representatives of the United States passed the 19th day of March, 1842.*

OFFICE OF THE SOLICITOR OF THE TREASURY,

*December*, 1842.

SIR: Having been selected by you, under the resolutions of the House

of Representatives of the United States passed on the 19th of March, 1842, prefixed hereto, as "the proper functionary of the Treasury Department to examine into the judicial expenses of the Government, and the laws and usages under which they are made, in the District of Columbia, and in the States and Territories of the United States," I have the honor to report the result of the examination thus committed to me.

One of these resolutions indicated that the judges of the courts, their clerks, the district attorneys, and marshals, were the best, if not the only, sources from which a knowledge of the important subjects thus committed for investigation could be obtained, and which the House desired, that it might act understandingly in correcting defects in the law and abuses in its exercise. I accordingly digested and prepared a circular to these officers, in which, with a copy of the resolutions of the House, I submitted eighteen interrogatories for their answers, a copy of which I here introduce:

OFFICE OF THE SOLICITOR OF THE TREASURY,
*May* 11, 1842.

SIR: I transmit, herewith, a copy of the preamble and resolutions passed by the House of Representatives on the 19th of March last, directing, as you will perceive, the Secretary of the Treasury, with the agency and assistance of the proper functionary of the Treasury Department, to examine into the judicial expenses of the Government, &c. These resolutions have been referred to this office.

It is obvious that much information is wanted, to make such a report on this important subject as will enable Congress to act understandingly, so as to correct abuses, if any such exist, without impairing the efficiency of the Judiciary.

This, no doubt, induced the adoption of one of these resolutions, which requires the judges of the courts, their clerks, the district attorneys, and marshals, to furnish such information as might be required by the functionary having charge of the subject.

That I may satisfactorily perform the duty devolved upon me, I have prepared the following interrogatories to the district attorneys, clerks of the district, and marshal, respectively, which I now submit to you, and request that you will, at your earliest convenience, reply to such of them as you may be able to answer.

I have adopted the plan of interrogatories on the general subject, rather than of particular interrogatories to each officer proper to the duties of his office, because it is the more convenient form of a circular, and it is best adapted to obtain full information on the whole subject, from the officer who may be informed in regard to it, whether that information relate to his own or the office of another.

*Interrogatories submitted by the Solicitor of the Treasury to the district attorneys, marshals, and clerks of the district and circuit courts of the United States, respectively.*

1. What fees are allowed to the district attorney, marshal, and clerks of the district and circuit courts, respectively, in your district, in cases wherein the United States are plaintiffs, which are settled before judgment; and what, where such cases are proceeded in to judgment; and

what, where execution issues, and satisfaction is obtained by execution? State the items, distinguishing between charges for services actually performed, and such as are fictitious, or for services supposed to be performed, although in fact not so.

2. If there are fees other than those stated by you in your answer to the preceding question, please state what they are, and for what services, actual or fictitious.

3. What is the amount, and items, of a bill of costs allowed on an indictment prosecuted to conviction at the first term? What in case of a *nolle prosequi* at the first term; and how much, exclusive of witness fees, is a bill of costs increased by a continuance to another term, and then finally disposed of?

4. What is the number of suits in favor of the United States which have been discontinued during the past year, and what the amount of costs to each officer in such cases?

5. What are the great items of expenditure at any one term of a circuit court? What at a district court?

6. Are compensatory fees, or fees not specifically provided for in the fee bills, allowed in your district? If such are allowed, specify, as nearly as you can, for what services, their nature and amount.

7. Are constructive fees, or fees for services not rendered, but supposed to be rendered, allowed? If so, in what cases? State their nature and amount.

8. Are double fees allowed, or fees for services in fact rendered, but charged for in several writs or process, as if severally performed on each, when in fact there has been but one service? If yes, state in what cases this practice occurs.

9. How is mileage computed, generally, and particularly how on jury or other process; how when one writ, how when several are in hands of the officer; how when there is one, and how when there are more than one defendant or person embraced in the writ or process? Be particular in stating the mode of computing mileage in every case.

10. What fees are paid to jurors; are they ever allowed for a greater number of days than they actually attend court, by way of extra allowance; and when summoned to attend, and actually attending, the circuit and district courts at the same time, are they allowed double fees, or fees for attending each court?

11. When, and under what circumstances, are costs paid by the United States; are they paid, from time to time, as the action progresses, or at the termination of the case? If paid before the end of the case, state what costs, to what officers, and the amount which has been so paid to each officer in each year for the last three years.

12. If costs are so paid by the United States before the end of the case, what disposition is made of them when they are collected from the defendants?

13. What amount of costs has been paid in your district, within the last year, to the district attorney, marshal, and clerks of the district and circuit courts, respectively, by the defendants, in cases where the United States are plaintiffs; and has the amount of such payments varied materially in the last three years; and if so, state, if you can, the reason.

14. By whom are bills of costs taxed in your district, and upon what notice, and to whom, when the United States are concerned?

15. How, upon what evidence, where, and by whom, are costs paid for the United States, and what account for the same is settled, and by whom?

16. If there are any other judicial expenses in your district besides those referred to, and other than the salary of judges, please to state what they are, their nature, and amount.

17. Furnish to this office a copy of the fee bill of your State or district, under which the costs in it are taxed, and a reference to any authority by which the amount or mode of taxation is judicially regulated; if rules of court on the subject have been adopted, please to furnish copies of such rules.

18. Reply, if you please, to the two interrogatories embraced in the resolutions of the House, as if the same had been herein set forth; and in your answers to them, and to the inquiries made, imbody all the suggestions which your experience or observation may induce you to believe will tend to further the objects proposed to be accomplished by the House of Representatives.

Very respectfully, your obedient servant,

C. B. PENROSE,
*Solicitor of the Treasury.*

It became very apparent, from a superficial examination of the subject, that it was in itself so complicated, and the residences of the different officers addressed so remote, that it could not be expected that time would be afforded to make the proper investigation, in the way proposed, so as to present a report of the result at the session at which the resolutions were adopted; and that, with every disposition to comply with the request "to make the report as speedily as circumstances will permit," it would be impracticable to present such a report short of the then next session of Congress. Indeed, I have been somewhat retarded in the prosecution of the work by the delay of a reply to my circular by the officers addressed, many of whom, and from some of the most important districts, have sent their answers only within the last few days, while some have wholly neglected to reply. Upon being called upon a second time for such answers, some of the officers suggested that, under the supposition that the act of the 23d day of August, 1842, entitled "An act further supplementary to an act entitled 'An act to establish the judicial courts of the United States,' passed the 24th September, 1789," had superseded these resolutions, they had dismissed the subject from their minds, and that, under this misapprehension, they had concluded a reply would not be required. This, perhaps, may account for the omission of those who have not answered, and for any haste and imperfection which may be disclosed in the answers delayed until so late a period. A delay that was supposed by me to proceed as well from a desire carefully to examine the subject, in order that the replies might be full, explicit, and satisfactory, as from pressing official engagements, it will thus be perceived, originated in a very different reason, and one which has allowed but little time for considerate inquiry and careful reply. Nor, generally speaking, do these replies furnish the ample information which was expected. This may be referred to the fact just stated, the circumstance that many of the officers of the courts are of comparatively recent appointment, and to an opinion, which seems to prevail extensively among them, that there are no abuses to rectify, and that the great defects in the law are the want of adequate compensation in some

districts, and the too liberal allowances in others. I am happy to say that there are some exceptions to this remark, and to acknowledge the valuable information communicated in some of the replies received.

It will be perceived that the preamble to the resolution asserts, in regard to the judicial expenses of the Government, an increase in the amount from $209,000, which it was in 1824, to $471,000, which it was in 1840. In the replies to my circular, this increase is attributed to the increase in the population of the country, the enlargement of judicial as well as every other kind of business, the establishment of new courts, with officers and judicial machinery, all of which have gone, undoubtedly, to enlarge the judicial expenses of the Government, and will, in a degree, explain the reason of the difference in the amount at the two periods referred to. This argument, so entirely natural, no doubt occurred to the House, who, nevertheless, did not regard it as sufficient to account for the whole increase noticed, but believed "that an investigation into the subject, carefully conducted, would lead to a detection of defects in the law, and abuses in its exercise, which, if properly corrected, would save annually to the United States a large sum of money."

In requiring that investigation to be made, however, and the preparation of "specific plans" to remedy existing mischiefs, care is taken to direct that it should be so conducted, that while retrenchment of expenditure should be sought, it should not be attempted so as to interfere with the wholesome action of the Judiciary. Thus limited and controlled, as this investigation properly is, by high considerations of economy of administration, and the wholesome and all-important action of the judicial branch of the Government, I have felt it to be one not only of great interest, but of extreme delicacy, and I have conducted it with an anxious desire to discover the just balance between these considerations. I present the result of my labor, not without distrust, and with unfeigned diffidence, to the better judgment of the House which adopted these resolutions.

I may say, in advance, that, from this investigation, I am led to concur in the belief that there are defects in the law, and that there have been abuses in its exercise, operating not only injuriously on the interests of the Government, but also oppressively on the citizen; but, in presenting specific plans to remedy these mischiefs, while I express confidence in the conviction that justice will be promoted if they are adopted, I am not able, with any confidence, to affirm that a "large sum" will be saved, in the shape of judicial expenses, to the United States. The nature of the plans proposed, and the subject itself, preclude the possibility of arriving at accurate conclusions on this point.

As the investigation to be conducted was expected to lead to a detection of defects in the law, and abuses in its exercise, it naturally presented for inquiry—

1. What the law by which these judicial expenses are regulated is.

2. What are the defects, if any, in that law, and the abuses in its exercise, which have occurred?

3. What are the proper remedies for the mischiefs which exist, and herein, of "the specific plans" for the remedy of these mischiefs, required to be reported?

Minor points of inquiry are presented in the resolutions, but they may be readily resolved to one or other of the foregoing heads of inquiry; and, in conducting this investigation, it has been regarded as within its just

scope to consider the operation of the system on the citizen, to relieve him from oppression, as well as to guard and protect the rights of the Government.

1. The first inquiry is, to ascertain what the law regulating judicial expenses is.

Among the acts of the first Congress was "An act to regulate processes in the courts of the United States." By the second section it was enacted that, until further provision should be made, and except where by the act itself, or other statutes of the United States, it was otherwise provided, the forms of writs and executions, except their style and modes of process, and *rates of fees*, except fees to judges in the circuit and district courts, in suits at common law, should be the same in each State, respectively, as were then used or allowed in the supreme courts of the same. The forms and modes of proceeding, in causes of equity and of admiralty and maritime jurisdiction, were to be according to the course of the civil law, and the rates of fees the same as then were or had been last allowed by the States, respectively, in the court exercising supreme jurisdiction in such cases. (Act of 29th September, 1789.)

This act was to continue in force until the end of the next session of Congress. At that session, the act was continued until the end of the next session. (See act of 26th May, 1790.) By the act of 18th February, 1791, the above act was continued in force until the end of the next session. The 8th section of the act of 8th May, 1792, repealed the above cited act.

The first, second, and third sections of the act of March 1, 1793, prescribed the fees of practitioners, clerks, and marshals, in causes of admiralty and maritime jurisdiction. The fourth section enacted that there be allowed, in the supreme, circuit, and district courts of the United States, in favor of the parties obtaining judgments therein, such compensation for their travel and attendance, and for attorneys and counsellors' fees, except in the district courts, in cases of admiralty and maritime jurisdiction, as were allowed in the supreme or superior courts of the respective States. The act was to continue in force for one year, and from thence until the end of the next session of Congress thereafter. It was continued in force by the act of 31st March, 1796, for the term of two years from that date, and from thence to the end of the next session of Congress thereafter.

The next law was that of 28th of February, 1799, entitled "An act for providing compensation for the marshals, clerks, attorneys, jurors, and witnesses, in the courts of the United States, and to repeal certain parts of the acts therein mentioned, and for other purposes." It established the fees of marshals for the various kinds of services therein enumerated; fixed the compensation of the clerk of the Supreme Court of the United States, and allowed to the clerks of the circuit and district courts, in each State, respectively, the same fees as were allowed in the supreme court of such State, with an addition thereto of one-third of said fees, together with five dollars per day for their attendance at any circuit or district court, and ten cents per mile for their travel from their places of abode to either of these courts. It further provided, that if the clerk performed any duty which was not performed by the clerks of the State, and for which the laws of the State made no provision, the court in which such service was performed should make a reasonable compensation therefor.

The fourth section provided that the compensation to the district attorneys should be five dollars per day while necessarily attending any dis-

trict or circuit court on business of the United States; for travelling from the place of his abode to such court, ten cents per mile; and he was entitled to receive such fees in each State, respectively, as were allowed in the supreme court thereof. Certain specific fees were granted, and an annual sum of $200, as a full compensation for all extra services, was allowed to each district attorney therein mentioned. Grand and other jurors, and witnesses, were each entitled to one dollar and twenty-five cents for each day while attending court, and at the rate of five cents per mile for travelling from their respective places of abode to court, and a like allowance for returning; criers were allowed two dollars per day. The same sum was allowed to the persons appointed to attend upon the jurors, and to perform the necessary duty of bailiffs.

This is the act of Congress by which the officers of the United States are now mainly governed in taxing their costs for the services therein mentioned. Before suggesting any modification of its provisions, it will be expedient to glance at the laws regulating the practice of the circuit and district courts of the United States in civil actions at common law. The first act of Congress having reference to this subject is that of 29th September, 1789, which I have already cited to show that not only the rates of fees, but the forms of writs and executions, and modes of process, in the courts of the United States, were to be the same as were then used and allowed in the supreme courts of the several States—a provision which was the suggestion of great good sense. This act was of a temporary character; but experience proved the value of the principle; and accordingly we find that at the third session of Congress a permanent act was passed, which is usually called the process act; it was approved on the 8th of May, 1792. The second section enacts, "that the forms of writs, executions, and other process, *except their style*, and the forms and modes of proceeding in suits in those of common law, shall be the same as are now used in the said courts, (the supreme, circuit, and district courts,) respectively, in pursuance of the act entitled "An act to regulate process in the courts of the United States, in those of equity, and in those of admiralty and maritime jurisdiction, according to the principles, rules, and usages, which belong to courts of equity and to courts of admiralty, respectively, as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the judicial courts of the United States; subject, however, to such alterations and additions as the said courts, respectively, shall in their discretion deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rule, to prescribe to any circuit or district court, concerning the same."

The insertion of the words "except their style" in this section shows the importance of great caution in legislating upon subjects already of statutory regulation. "The words 'except their style,' (to adopt the language of Judge Conckling,) must have been inadvertently copied from the first act. In that act they referred to the style of processes (i. e. the name of the authority under which they were issued) in the *State* courts, and were therefore appropriate and necessary; but, as they stand in this act, they refer to process in the courts of the *United States*, in the style of which it was not intended to make any alteration. They were, therefore, erroneously inserted, and have accordingly been inoperative in practice." (Conckling's Treatise, 196, note A.)

It is obvious that this part of the act could only apply to those State

which constituted the Union at the time of its passage. It became necessary to apply some such provision to the after-admitted States, and that was accomplished by the act of 19th May, 1828, the first section of which is as follows:

"The forms of mesne process, except their style, and the forms and modes of proceeding in suits in the courts of the United States, held in those States admitted to the Union since the twenty-ninth day of September, in the year seventeen hundred and eighty-nine, in those of common law, shall be the same in each of the said States, respectively, as are now used in the highest court of original jurisdiction of the same in proceedings in equity, according to the principles, rules, and usages, which belong to courts of equity, and in those of admiralty and maritime jurisdiction according to the principles, rules, and usages, which belong to courts of admiralty, as contradistinguished from courts of common law, except so far as may have been otherwise provided for by acts of Congress; subject, however, to such alterations and additions as the said courts of the United States, respectively, shall in their discretion deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rules, to prescribe to any circuit or district court, concerning the same."

Again, it became necessary to provide for after-admitted States; that is, for those which became a part of the Union subsequent to the 19th of May, 1828. To meet the exigency, it was enacted, on the 1st of August, 1842, that the provisions of the act of the 19th May, 1828, be made applicable to such States as had been admitted into the Union since the date of that act.

These citations of the acts of Congress develop the ruling object of the legislative power, in regard to the forms of process and fees of the officers of justice in the Federal courts. The design of the first Congress, to assimilate both to the forms and compensation used and allowed in the State courts, has not been abandoned by succeeding Congresses, but, on the contrary, has been steadily pursued to our times, as will be seen on inspection of the extracts from the act of 20th July, 1840, in regard to jurors, and from the appropriation acts of 1841 and 1842, hereinafter given. It seems that the practical result was not always such as met the approbation of Congress; for we find that acts were occasionally passed to restrain or regulate some supposed abuse or obnoxious practice. For instance, the act of 22d July, 1813, entitled "An act concerning suits and costs in courts of the United States," was intended to restrain the accumulation of costs by preventing multiplicity of suits, and by consolidating judicial proceedings. The act of 12th October, 1837, entitled "An act to regulate the fees of district attorneys in certain cases," was to restrain those officers from taking a fee on any bond left with them for collection, or in a suit commenced on any bond for the renewal of which provision was made by law, where the party or parties did not neglect to apply for such renewal for more than twenty days after the maturity of such bond. The act in regard to jurors, to which I alluded, provided, in substance, that jurors of the courts of the United States, in each State, should have like qualifications, and be entitled to the like exemptions, as jurors of the highest court of law of each State were entitled to, and should thereafter, from time to time, be entitled to, and should be designated by ballot, lot, or otherwise, according to the mode of forming juries then practised or thereafter to be practised

in each State, so far as such mode were practicable in the courts of the United States.

The first section of the "act making appropriations for the civil and diplomatic expenses of the Government for the year 1841" not only attempts to regulate the fees of clerks, attorneys, and marshals, by reference to the State fee bills, but introduces new provisions as to the compensation of these officers, in regard to the propriety of which much doubt prevails, and no less as to their proper construction. The proviso of that section is as follows:

"*Provided*, That hereafter, in lieu of all fees, emoluments, and receipts, now allowed in district courts, where the present entire compensation of any of the officers hereinafter named shall exceed the sum of one thousand five hundred dollars per annum, it shall and may be lawful for the United States clerks, clerks' attorneys, counsel, and marshals, in the district and circuit courts of the United States in the several States, to demand and receive the same fees that are now or hereafter may be allowed by the laws of said States, respectively, where said courts are held, to the clerks, attorneys, and counsel, and sheriffs in the highest courts of the said States in which like services are rendered; and no other fees or emoluments, except that the marshals shall receive, in full for summoning all the jurors for any one court, thirty dollars, and shall receive for every day's actual attendance at any court five dollars per day; and for any services, including the compensation for mileage, performed by said officers in the discharge of their official duty, for which no compensation is provided by the laws of said States, respectively, the said officers may receive such fees as are now allowed by law, according to the existing usage and practice of said courts of the United States; and every district attorney, except the district attorney of the southern district of New York, shall receive, in addition to the above fees, a salary of two hundred dollars per annum: *Provided*, That the fees and emoluments retained by the district attorneys, marshals, and clerks, exclusive of any reasonable compensation to their deputies, to be allowed in their accounts by the courts of the respective districts to which they belong, and, after the payment of such necessary office and other expenses as shall be allowed by the Secretary of the Treasury, not to exceed, as to any one of the said offices in the southern district of New York, the sum of three thousand dollars per annum, and in any other district the sum of one thousand dollars per annum, shall in no case exceed for the district attorneys and the marshals, or either of them, the sum of six thousand dollars for each; and those for each of the clerks shall not exceed, in any case, four thousand five hundred dollars—the overplus of fees and emoluments to be paid into the public Treasury, under such rules and regulations as may be prescribed by the Secretary of the Treasury, subject to the disposition of Congress."

The next important enactment is the act making appropriations for the civil and diplomatic expenses of Government, passed the 18th of May, 1842, from which I make the following extract:

"No. 167. For defraying the expenses of the Supreme, circuit, and district courts of the United States, including the District of Columbia, also for jurors and witnesses, in aid of the funds arising from fines, penalties, and forfeitures, incurred in the year 1842 and preceding years, and likewise for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United

States, and for the safe keeping of prisoners, including expenses under the bankrupt law, and also including thirty thousand dollars arrearages for last year, three hundred and seventy-five thousand dollars: *Provided, however,* That every district attorney, clerk of a district court, clerk of a circuit court, and marshal of the United States, shall, until otherwise directed by law, upon the first days of January and July in each year, commencing with the first day of July next, or within thirty days from and after the days specified, make to the Secretary of the Treasury, in such form as he shall prescribe, a return, in writing, embracing all the fees and emoluments of their respective offices, of every name and character, distinguishing the fees and emoluments received or payable under the bankrupt act from those received or payable for any other services; and, in the case of a marshal, further distinguishing the fees and emoluments received or payable for services by himself personally rendered from those received or payable for services rendered by a deputy; and also distinguishing the fees and emoluments so received or payable for services rendered by each deputy by name, and the proportion of such fees and emoluments which, by the terms of his service, each deputy is to receive; and also embracing all the necessary office expenses of such officer, together with the vouchers for the payment of the same, for the half year ending on the said first day of January or July, as the case may be; which return shall be, in all cases, verified by the oath of the officer making the same. And no district attorney shall be allowed by the said Secretary of the Treasury to retain, of the fees and emoluments of his said office, for his own personal compensation, over and above his necessary office expenses, the necessary clerk hire included, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding six thousand dollars per year, and at and after that rate for such time as he shall hold the office; and no clerk of a district court or clerk of a circuit court shall be allowed by the said Secretary to retain of the fees and emoluments of his said office, or, in case both of the said clerkships shall be held by the same person, of the said offices, for his own personal compensation, over and above the necessary expenses of his office, and necessary clerk hire included, also to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding three thousand five hundred dollars per year for any such district clerk, or a sum exceeding twenty-five hundred dollars per year for any such circuit clerk, or at and after that rate for such time as he shall hold the office; and no marshal shall be allowed by the said Secretary of the Treasury to retain of the fees and emoluments of his said office, for his own personal compensation, over and above a proper allowance to his deputies, which shall in no case exceed three-fourths of the fees and emoluments received as payable for the services rendered by the deputy to whom the allowance is made, and may be reduced below that rate by the said Secretary of the Treasury, whenever the returns shall show that rate of allowance to be unreasonable, and over and above the necessary office expenses of the said marshal, the necessary clerk hire included, also to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding six thousand dollars, or at and after that rate for such time as he shall hold the office; and every such officer shall, with each such return made by him, pay into the Treasury of the United States, or deposite to the credit of the Treasurer thereof, as he may be directed by the Secretary of the Treasury, any surplus of the fees and emoluments of his office, which his half-yearly return, so made as

aforesaid shall show to exist over and above the compensation and allowances hereinbefore authorized to be retained and paid by him. And in every case where the return of any such officer shall show that a surplus may exist, the said Secretary of the Treasury shall cause such returns to be carefully examined, and the accounts of disbursements to be regularly audited by the proper officers of his Department, and an account to be opened with such officer, in proper books, to be provided for that purpose, and the allowances for personal compensation for such calendar year shall be made from the fees and emoluments of that year, and not otherwise: *And provided, further,* That nothing in any existing law of Congress authorizing the payment of a per diem compensation to a district attorney, clerk of a district court, or clerk of a circuit court, or marshal, or deputy marshal, for attendance upon the district or circuit courts during their sittings, shall be so construed as to authorize any such payment to any one of those officers for attendance upon either of those courts, while sitting for the transaction of business under the bankrupt law merely, or for any portion of the time for which either of the said courts may be held open or in session by the authority conferred in that law; and no such charge in an account of any such officer shall be certified as payable, or shall be allowed and paid out of the money hereinbefore appropriated for defraying the expenses of the courts of the United States, unless such district attorney, clerk, or marshal, shall be required by the judge of said court or the Solicitor of the Treasury to attend the session of the same, and shall actually attend for the performance of the duties of his said office; and no per diem or other allowance shall be made to any such officer for attendance at rule days of the circuit or district courts, and when the circuit and district courts sit at the same time, no greater per diem or other allowance shall be made to any such officer than for an attendance on one court: *And provided, further,* That the district attorney, marshal, clerk of the circuit court, and clerk of the district court of the United States for the northern and southern districts of New York, shall not hereafter receive any greater or other fees and emoluments, under the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," for services rendered by them, respectively, in the said courts, than now are or may hereafter may be allowed, by the laws of the State of New York, to attorneys, solicitors, counsel, sheriffs, and clerks, in the highest courts of law or equity, of original jurisdiction, of the State of New York, according to the nature of the proceedings for like services rendered therein: *Provided,* That no part of the fund hereby appropriated shall be applied, unless, in addition to the certificates now required by law, the clerk of the said court shall certify, in his official capacity, that the services have been rendered and the supplies furnished for and used by the court, and that the charges therefor were legal and proper."

Such are the general provisions of the existing law. I have detailed them at some length, that their advantages or defects might be the more easily discerned or remedied.

When the Federal courts were established, the simple and obvious plan for regulating the practice to be observed in proceedings before them, and for compensating their ministerial officers, was to recognise the forms and fees used and allowed in the supreme courts of the respective States. It would be the means of gaining the favor of the people for the new judicatures which were to be introduced into the States, and, within prescribed limits, exercising control over the property and liberty of the citizens. The

reasons in favor of the plan have, in the estimation of some distinguished civilians, lost none of their cogency by the lapse of time. On this point, I give an extract from the letter of Mr. Justice Gilchrist, of South Carolina, in reply to the circular issued by me:

"I beg leave to state that, it appearing to me just and proper that the officers of the United States courts, in each State, respectively, should receive the same fees as are allowed in the supreme court of such State, I am not aware of any amendment being required to the existing laws on this subject, except a provision to the effect that the costs and fees to be charged by the officers of the United States courts should conform in amount to the costs and fees allowed in the State courts at the time of their services being rendered. The fee bills prescribed by the different State Legislatures are framed in reference to the local situation and circumstances of the respective States, and are, in my opinion, more equitable than any standard of charges which might be adopted to govern the whole Union, as the fees which would be considered sufficient for services rendered in one district would be very inadequate compensation for similar services in another district."

On the contrary, Mr. Justice Conckling, of the northern district of New York, in his reply to the circular, remarks: "The just regulation of the fees of these officers is a subject of difficulty and embarrassment. I have always considered the adoption of the State fee bills as a great error. Congress, I think, should enact independent fee bills, taking care to adapt them, by suitable qualifications and limitations, as far as possible, to the circumstances of the several districts."

Of a similar opinion is Mr. Justice Thompson, of the Supreme Court of the United States, who writes: "The policy of the Government seems to have been to conform to the costs in the State courts; and this would seem, in theory and in principle, to be very fit and proper, but very difficult in practice. The proceedings in the State courts are so different from the courts of the United States, that the rule is a very imperfect one, and affords no guide, and leaves the compensation for many services unprovided for."

It is unnecessary to multiply authorities on either side, because it must be obvious, on a very little reflection, that, in consequence of the various practice in the several States, and the numerous proceedings necessarily adopted by the courts of the United States, which are unknown to the State tribunals, there is, at least in regard to the mode of taxing costs, a practical defect in existing laws. In the State courts there is no practice corresponding to proceedings in the courts of the United States in cases of seizures, in admiralty suits, proceedings in bankruptcy, and other instances; and, consequently, the fees and costs charged in the State courts are inapplicable to a great proportion of business transacted in the courts of the United States.

I now proceed to the inquiry: How are the fees taxed in the Federal courts, where there are no corresponding services rendered in the State courts?

By recurring to the previous extract from the act of 3d March, 1841, it will be seen that the district attorneys, clerks, and marshals, are entitled to demand and receive the same fees that then were, or that thereafter might be, allowed by the laws of the States, respectively, to the clerks, &c., in the highest courts of the States in which like services were rendered; and for any services performed by them, for which no compensation was provided

by State law, they were to receive the fees then allowed by law, according to the existing usage and practice of the courts of the United States.

The construction put upon that act in New York, in relation to clerks, (and the reasoning applies to other officers of court,) is, that where the clerk performed services not performed by the clerk of the highest court of the State, he should regulate his fees by those allowed the clerk of the next highest court; and where he performed services not performed by the officers of the State courts, or for which they received no compensation, he was entitled to receive the same, as theretofore.

By the act of the 18th of May, 1842, it is provided, that the "district attorney, marshal, clerk of the circuit court, and clerk of the district court, of the United States, for the northern and southern districts of New York, shall not hereafter receive any greater or other fees and emoluments, including fees and emoluments under the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' for similar services rendered by them, respectively, in the said courts, than now are or hereafter may be allowed, by the laws of the State of New York, to attorneys, solicitors, counsel, sheriffs, and clerks, in the highest courts of law or equity, of original jurisdiction, of the State of New York, according to the nature of the proceedings, for like services rendered therein."

It is understood that Mr. Justice Thompson has decided, under this act, that where the clerk performs services not performed by the clerk of the supreme court of the State, or for which no compensation is allowed him, he shall be entitled to receive the same fees as before March 3, 1841. The consequence is, that to make out a bill of costs, in the United States courts in New York, it is necessary to ascertain first the items that are allowed in the court of errors, it being the highest court in the State; second, the items of costs allowed in the supreme court of the State, it being the highest court of law in the State; and, third, the items of costs allowed by law in the United States courts on the 3d of March, 1841, for which no compensation is provided by law of the State.

From this recital and review of the statutes and law bearing on the subject, which, to be intelligible, has been necessarily minute and tedious, the following conclusions in regard to the law regulating judicial expenses and modes of proceeding are deduced.

1. The forms and modes of proceeding in suits at common law are the same as those used in the supreme courts of the respective States.

2. In equity suits, and in maritime causes, the forms and proceedings are according to the principles, rules, and usages, which belong to courts of equity and to courts of admiralty, respectively, as contradistinguished from courts of law, except as they may be altered by statute or modified by rule of court.

3. The fees to the officers of the courts of the United States are the same as those allowed by the laws of the respective States where the courts of the United States are held to the clerks, attorneys, counsel, and sheriffs of the highest courts of the said States, in which like services are rendered.

4. Where no compensation is provided by the laws of said States for services performed by them, they are to receive such fees as are allowed by law, according to the existing usage and practice of the said courts.

5. Besides the fees so ascertained, there are certain specific charges allowed by statute, such as a salary of two hundred dollars per annum to

the district attorney, and a per diem of five dollars to the district attorney, marshal, and clerks of the courts of the United States.

It was perceived at once, upon looking at this system, that, to comprehend its merits or defects, it was material to ascertain the law of costs as established in the different States, and the usages and practice which prevailed, and which by law regulate and define the nature of the services, and the amount of the fees and costs to compensate them.

To this end, the officers addressed were requested to furnish a copy of the fee bill of their State or district, and a reference to any authority by which the amount or mode of taxation was judicially regulated, and such rules of court on the subject as had been adopted. In answer to this request, but few such fee bills have been supplied. Indeed, in some of the States, there is no such thing as a regular fee bill; compensation being made in such by usage judicially established, and not always very clearly ascertained. In discussing, therefore, the next head of inquiry, I have not ventured to consider the particular defects of the multifarious systems of costs which prevail in the different States, and which, as we have seen, are by statute made part of the law regulating the judicial expenses of the United States, but I have confined myself rather to general observations, and such defects as spring from the existing system, and the practice under it.

2d. The next inquiry then is: What are the defects, if any, in that law, and the abuses in its exercise which have occurred.

It would have been more logical to have considered, first, what the defects of the law are, and then what abuses have been practised in its exercise; but it was soon discovered, not only that it was very natural that abuses should creep into a system so indefinite, and indeed almost mysterious, as it is in some of the States, but that, from the very character of the law, it was extremely difficult to say whether an ascertained abuse arises from the imperfection of the law itself or a perversion of it. I consider the great defect of the whole system of this law of costs to be the adoption of the State fee bill to regulate the fees and costs to be paid to the officers of the United States, and the error, which is a consequence of this defect, of supplying by usage and practice any omissions and want of adaptation of State fee bills to the proceedings of the courts of the United States.

I am aware of the argument, that the conformity in this respect, and in the forms and modes of proceedings in the courts of the United States to the laws and courts of the States, was calculated to gain favor for the jurisdiction of the former; but, however cogent that argument might have been when the courts of the United States were first established, it surely has but little weight at this day, when these courts share so largely in the good opinion of the people; and, at all events, it should not prevail in a matter where it equally concerns both the people and the Government to have a plain and intelligible system, that shall guard both against unreasonable exactions. There should be no obscurity in the law of costs; in the rule for pecuniary allowance to the officers of the law, such obscurity will be far more likely to bring odium on the administration of justice in the United States courts than any want of conformity to State laws, often inapplicable to the subject. On this point I concur, therefore, fully with Judges Thompson and Conckling.

We have seen that, to make a bill of costs in the United States courts, at least in those for New York, it is necessary to ascertain the items of al-

lowance under the State law in the court of errors, it being the highest court in the State; and in the supreme court of the State, it being the highest court of law in the State, and the items allowed by law, according to exising usage and practice in the United States court, on the 3d of March, 1841. And this, again, might embrace an allowance under the statutes of the United States, and also under some rule of practice established by the court. A system of this sort may, in general, be stated to be objectionable for its complexity, and the facility it affords for abuse. It leaves that intricate and obscure which should be simple and intelligible, not to the professional man only, but to every citizen. It refers much to discretion, rather than to rule; it leads to the disregard of the law, and substitutes vague usage; it accumulates costs in one district, by the multiplication of items to a ruinous and startling excess and in another cuts down compensation to a comparatively insignificant amount. In some States there are no fee bills, properly speaking; and the costs in common-law suits are taxed without any statutable guide beyond that afforded by the act of Congress of February 28, 1799. When that is found to be defective, resort must necessarily be had to the discretion of the court, or the services of its officers remain uncompensated. In admiralty cases, in cases on the exchequer side of the court, in proceedings in equity, and those under the bankrupt act, the State fee bills are wholly inapplicable.

Subordinate to and growing out of this capital error, I may notice another glaring defect: it is the want of equality, or impartiality, arising under this system; by which I mean the very unequal compensation received in the various districts, by officers of the same grade.

By the system of taxation in New York, a charge is made for every particular service actually rendered, or, by fiction of law, supposed to be rendered; and the more adroitness there is in the multiplication of items, the more is the aggregate of costs enlarged, for the benefit of the practitioner. The New York statute of 14th May, 1840, entitled "An act concerning costs and fees in courts of law, and for other purposes," was intended to rectify abuses in their practice, or at least to diminish costs and fees; and so multifarious are the items, that the enumeration of them covers several printed pages. To display the inequality of compensation of the same officers in different States, I have annexed documents marked A and B. Reference will be made to one of them for another purpose in the progress of this report. I am aware that the labor in New York is greater than in other States, because of the prolixity and variety of the legal proceedings in use, nearly all which must be reduced to writing. Nor do I overlook the fact that the expense of living varies in different parts of the Union. But I do not find in both of these circumstances a justification for the grossly unequal receipts of the same officers in the respective States and Territories of the Union. The fee bill in New York is intended to afford a sufficient remuneration for professional services in each cause; while in Pennsylvania the only fee of an attorney in each suit is three dollars, no matter how difficult, protracted, and severely litigated the case may be—an amount not approaching in magnitude to the aggregate of charges in a New York bill of costs, for services supposed to be rendered.

I may enumerate among the defects in the law or abuses in its exercise, the charge of compensatory fees; that is, fees for services not specifically provided for by law, but for which what is judged a reasonable compensation

is charged or allowed. A fee bill should be specific, and no charge should be permitted which is not provided f r in it.

A kindred defect or abuse is in the charge of fees for fictitious services, or double fees.

The former occurs when fees are charged for services not in fact rendered, but which are supposed to be rendered, for the purpose f making the charge. The latter, or double fees, are charged for a service actually rendered, but for which compensation is twice charged, because it is rendered on more than one writ, or in several cases, or in different courts.

One of the interrogatories propounded by me is, "Are constructive fees, or fees for services not rendered, but supposed to be rendered, allowed? If so, in what cases? State their nature and amount."

On this point I have received but little information; yet it is clear that such fees enter very largely into the composition of a bill of costs in New York. The understanding is, to suppose every thing done in the progress of a cause which might have been done, and in that way to charge for services not actually performed. I allude to the practice of New York with no improper feeling in regard to it, but simply to illustrate the position that State forms and State fees form a very vague and impolitic basis, at the present day, for the forms and fees of the courts of the General Government.

The returns in most instances deny that compensatory fees, or fees not specifically provided for in the fee bill, are ever allowed; yet it is clear that they are frequently permitted. Thus, the clerk for the eastern district of Pennsylvania states that for services not specifically "provided for in the fee bill an allowance is made by the court, on a consideration of the particular service performed. Among these may be included making distribution of a fund in court, stating an account, assessing damages in judgment by default," &c.

Mr. Justice Hall, of Delaware states "that compensatory fees have been allowed. In criminal cases tried at Dover, the accused have been removed from the jail at Newcastle to the place of trial; reasonable compensation has been allowed the marshal to defray the expense of removing them from Newcastle to Dover, and back to Newcastle. This shows the ground of allowance."

The district attorney of Kentucky states that "occasionally, in this (his) district, in prosecution for felony, the judge has allowed a fee to the attorney prosecuting for the Government. It has varied according to the magnitude and importance of the case, and the labor of the prosecution, from $100 to $200. In Illinois and Arkansas, compensatory fees are allowed to the marshal and district attorney."

It is not admitted generally, by the returns, that double fees are allowed, or fees for services in fact rendered, but charged for in several writs or processes, as if severally performed in each, when in fact there has been but one service. Yet double fees certainly are frequently allowed. For instance, the laws of the United States allow a district attorney five dollars while attending court, in addition to this sum. In Massachusetts and Maine, and perhaps other States, he receives a daily fee for attendance, under the State fee bills. In some instances the clerk, where several pleas are filed, charges a distinct fee for each plea, though the filing of these pleas by law is but one act. In some of the circuits, as in Kentucky, the district attorney receives a per diem of $5 for attending each circuit and district court, when

*both* are in session at the same time. Jurors, also, in that circuit, if in attendance on both courts, receive double pay while in actual service.

The marshal for the eastern district of Tennessee writes thus: "Within the last four years I have known, in two instances, witnesses allowed and paid travel and attendance double, against one defendant, and treble against the other, where the defendant was indicted, one of them on two bills of indictment, and the other on three, the witnesses having been bound separately on each bill of indictment to appear."

In Illinois, jurors and witnesses, if summoned to both courts, draw pay for each court. It is very probable that similar allowances are made in States other than those above named, though, from a misapprehension of my question, the information has not been obtained.

The marshals are in the practice of taxing a custody fee in each proceeding against the same estate or vessel. This may not be considered a double fee in the same case, but it is a double fee for the same service. For instance, the schooner Catharine was libelled in New York for being engaged in the slave trade. The marshal had her in custody from December 30, 1839, to March 24, 1841—450 days—for which he charged $675. The same schooner was informed against, for a violation of the navigation act. The marshal had her in custody from November 17, 1840, to March 24, 1841—128 days. His charge was $192; yet there was in truth but one custody. The excuse or argument for this charge is, that, as he was responsible for the safe keeping in both proceedings, it is proper that he should be compensated in each; but it is worthy of consideration, whether the actual cost of safe keeping should not be equally divided in such cases, so as to permit but one charge for one service.

Under this head of inquiry, it became important to ascertain in what cases the United States are bound to pay costs, and when they should be paid; and this will lead to the disclosure of another defect in the law, or abuse of it.

It is undoubtedly (to use the language of the court, in the case of the United States vs. Ringgold, 8 Peters 150) a general rule that no court can give a direct judgment against the United States, for costs, in a suit to which they are a party, either on behalf of any suitor or any officer of the Government; but it by no means follows from this that they are not liable for their own costs; and the court, in that case, held that no direct suit for such costs can be maintained against the United States. But where an action is brought by the United States, to recover money in the hands of a party, a claim for such costs may be set off.

The rule to be deduced from this case is, that there is the same obligation on the United States to pay costs as upon an individual in like circumstances. The only difference is, that in regard to the former there exists no remedy to coerce payment. The right is the same in both cases, but there is a legal remedy against the individual party. There is none against the United States. The United States may pay when they please, or not at all. Recognising the moral obligation, it has been the practice of the United States to pay in all cases where a private person is bound to pay. But I find that in some, if not all the districts, it is the custom for the Government to do more than a private suitor is bound to do. Such suitor, as to the greater part of the costs of suit, is not bound to pay until the end of the suit. This rule is a very proper one; as, until the suit is terminated, it is not usually ascertained which of the parties will have to pay the costs.

The losing party, for the most part, pays, or is bound to pay them. If, on final process, it is ascertained that they cannot be recovered from him, the prevailing party, generally speaking, must then pay costs to the *officers* entitled to receive them. But in regard to the United States, against whom, as it will be perceived, no coercive proceeding to compel payment can be used, the practice has been not only to pay costs in cases where a private citizen would be liable to pay them, but, instead of paying at the end of the suit, to pay at stated periods during its progress, as at the end of each term.

My attention was called to the subject of the charge of costs against the United States, soon after I came into office, by returns made officially, in which, as I thought, I discovered mischiefs requiring correction. This seemed to me to be one; and, without venturing to abolish a prevailing practice, from a distrust of my power to do so, I endeavored to avoid the injurious consequences which I supposed must fall upon the United States from such a practice, and issued a circular requiring that, whenever the costs were paid by the United States, they should be entered of record, and marked, for the use of the United States; so that the fact might appear of record, and in the event of payment by the adverse party, the amount might be repaid to the United States. Without undertaking to say whether the practice is a defect of the law or an abuse in its exercise, I do not hesitate to express the opinion that it is a bad one, and ought to be abolished.

In the first place, there is no obligation, either legal or moral, to pay before the end of the suit.

2. It is inexpedient to pay before it is ascertained whether the costs may not be recovered from the adverse party.

3. And, again, if payment be made from time to time, as the cause progresses, there is reason to apprehend that, if the adverse party should pay the costs at the end of the proceeding, the amount, from inadvertence or design, will not be refunded to the United States. The likelihood of this occurring may be inferred from the fact, that the costs of suit, in some districts, are not noted upon, nor do they appear in any way on the docket of the suit.

Connected with this point, as to the liability of the United States for costs, are the questions, which have frequently occurred, as to the extent of the duties of the district attorneys of the United States, and their corresponding right to receive compensation, and in what form it should be made to them. In my judgment, legislation on this subject is required, either to declare what the law is or what it should be.

By the act of Congress of the 24th September, 1789, (1 Story's U. S. Laws, 67,) which creates the office of district attorney of the United States, his duty is defined to be, "to *prosecute*, in such district, all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the Supreme Court, in the district in which that court shall be holden."

It cannot be denied that his duty related to all civil suits in which the United States "*shall be concerned;*" but it has been contended that the general import of these terms is controlled by the meaning of the words "to prosecute," so as to limit the duty to cases in which the United States are plaintiffs and parties of record; and that this phrase was intentionally employed, as it was understood that, under the Constitution and laws of the United States, suits could not be brought *against* the United States. It

was also contended that the duty was limited to the courts of the United States, so that the district attorney was not bound to attend to cases in the State courts, in which the United States were concerned, either directly and as a party of record, or indirectly, as when the suit is in the name of a private person.

These questions were examined, in 1820, by Mr. Attorney General Wirt, whose opinion may be found among the opinions of the Attorneys General of the United States, in Doc. No. 123 of Executive Documents, 2d session 24th Congress, page 282. He held—

1st. That the district attorney was not bound to attend to the interests of the United States in the State courts.

2d. That he is bound to attend to such interests, in the courts of the United States in his district, in all civil actions in which the United States "shall be concerned," whether as a party of record or not.

3d. That he is not bound, *ex officio*, to attend to taking depositions.

The inclination of my own mind is, that this opinion is a sound one; but I find that, in practice, it has not been regarded, and district attorneys, in contravention of it, have charged and received large sums as counsel fees; for instance, in suits brought against a collector of the revenue for duties paid under protest. Thus it has happened that suits have been brought against such collector in the State courts, and thence removed into the courts of the United States by the district attorney acting on behalf of the collector. According to the opinion of Mr. Wirt, just cited, when such causes were removed into the circuit court of the United States, it became the duty of the district attorney, *ex officio*, to attend to them for the compensation allowed by acts of Congress. He says: "I found this opinion on the language of the act of 1789, which prescribes the duties of this office, and which expressly requires him, *inter alia*, to attend professionally to 'all civil actions in which the United States shall be concerned, except before the Supreme Court (of the United States) in the district in which that court shall be holden.' The duty of the Attorney General, as to suits in the Supreme Court, is defined in the same language precisely: 'whose duty it shall be to prosecute *and conduct* all suits in the Supreme Court, in which the United States shall be concerned.' Yet I believe it has never been doubted by either of my predecessors, and certainly is not by myself, that, whether the United States are named as parties or not, the Attorney General is bound to attend to every case in the Supreme Court, in which their interests are concerned. Such, indeed, is the clear and unambiguous language of the law, so that there is no room for construction."

I have already said that the inclination of my mind is to concur in the soundness of this view; but it is fair to say that the argument is not without a show of plausibility; that the difference in the language of the act, in regard to the duty of the Attorney General and the district attorney, admits of a different construction as to the duty of each. The difference, it will be observed, is in the use of the word "conduct," in connexion with the words "to prosecute," which alone are employed in prescribing the duty of the district attorney; and it is contended that the language in relation to the Attorney General comprehends the prosecution *and defence* of suits of every description, in that court, in which the United States are concerned, which is not the case with the district attorneys.

It is the duty of a district attorney "to *prosecute* in his district all delinquents, for crimes and offences cognizable under the authority of the Unit-

ed States, and all civil actions in which the United States shall be concerned." His duty, it has been argued, is limited to the *prosecution* of criminal and civil actions—the law not imposing upon him the obligation of defending, or, in the language prescribing the duty of the Attorney General, "to prosecute and conduct all suits," &c. The argument, if true, seems to savor of refinement. Be this as it may, it appears that Benjamin F. Butler, Esq., when United States attorney for New York, presented a bill to Jesse Hoyt, Esq., then collector, for taxable costs and counsel fees in the defence of Mr. Hoyt, in twenty-four suits brought against him to recover duties paid under protest. These suits were commenced in the State court, and removed by Mr. Butler to the circuit court of the United States. The amount of his bill was $2,481 61. The ground assumed by Mr. Butler was, that the United States were not the prosecuting party, and that they were not, legally speaking, *concerned* in these cases, although they had an interest in the question pending. If this be the true construction of the statute, the law requires amendment in this particular; and, at all events, it will be well to remove all doubt, by declaring what the law is, or should be. It is right to add, that the propriety of that payment has been challenged by the accounting officers, and the allowance of it in the account of Mr. Hoyt suspended. The question as to its propriety will no doubt be made, and judicially decided, in the suit against Mr. Hoyt which is still pending.

The statute against the multiplication of actions, and to restrain the increase of costs unreasonably and vexatiously, has been disregarded in practice; or it is defective in its provisions, if insufficient to prevent the abuses or mischiefs which have occurred, and which it ought to prevent, if it do not. That statute (which will be found in 2d Story's U. S. Laws, 1319) declares, that whenever there shall be several actions or processes against persons who might legally be joined in one action or process touching any demand or matter in dispute before a court of the United States, or of the Territories thereof, if judgment be given for the party pursuing the same, such party shall not thereon recover the costs of more than one action or process, unless special cause for several actions or process shall be satisfactorily shown, on motion, in open court, and, further, that whenever causes of like nature, or relative to the same question, shall be pending before a court of the United States, or of the Territories thereof, it shall be lawful for the court to make such orders and rules concerning proceedings therein as may be conformable to the principles and usages belonging to courts, for avoiding unnecessary costs or delay in the administration of justice; and, accordingly, causes may be consolidated, as to the court shall appear reasonable. It further provides, in the third section, that if any attorney, &c., in a court of the United States, &c., shall have appeared to have multiplied the proceedings in any cause, so as to increase costs unreasonably and vexatiously, such person may be required, by order of court, to satisfy any excess of costs so increased.

It has been argued, that although it is not impracticable to maintain one suit only for all bonds, however numerous, executed by the same obligors, and which are handed to the district attorney for suit at one and the same time, yet there is nothing in the act of 1813 which prohibits the institution of separate suits—the first section applying in cases where *several* suits are brought against persons liable for *one* particular demand or matter in dispute, and not to the case of several suits brought against the same obligors

upon *different* bonds, each of which bonds constitutes a distinct demand and matter in dispute. The third section, it is contended, does not prohibit a separate suit on each of such bonds, but empowers the court, where several suits are pending, to consolidate them. This is the course of reasoning adopted to sustain the bill of costs hereunto annexed, (A,) to which I have heretofore alluded in another connexion. It was taxed in the cases of the United States *vs.* N. J. Elliot & Co. It appears that, in December, 1839, and January, 1840, the then collector of New York handed to Mr. Butler, then district attorney, eighty bonds given by N. J. Elliot & Co., as principals, and Reuben Elliot as surety, all dated May 14, 1836. On the 17th of March, the district attorney commenced forty suits against Nelson J. Elliot, David N. Lord, and Reuben Elliot, each suit being upon the custom-house bond, executed by Nelson J. Elliot & Co. as principals, and by Reuben Elliot as surety. It subsequently appeared that David N. Lord was not a member of the firm of Nelson J. Elliot & Co. on the 14th of May, 1836, when the bonds were given ; and the district attorney was obliged to discontinue the suits.

| | |
|---|---|
| Costs in each of these discontinued suits - - - | $59 89 |
| Total costs in the forty discontinued suits - - - | 2,395 60 |

The district attorney then commenced a *single* suit on the eighty bonds, against Nelson J. Elliot and Reuben Elliot. Judgment was rendered in favor of the United States ; execution issued, and was returned at the June term, 1840, *nulla bona*, the defendants being insolvent when the suit was commenced.

The costs in this single uncontested suit amounted to - $1,209 51

Another instance of a similar character occurred in the district of Ohio, where, on six bonds given by one Presley Kemper, for internal duties, amounting, in the aggregate, to $378, suits and proceeeings were so multiplied by a former district attorney, now deceased, that the enormous sum of $1,224 is charged for costs; the payment of which will fall upon the United States, if the resistance I have directed to be made to it shall not be successful.

I am not satisfied with the reasoning which has been urged to sustain the practice adverted to, and it does appear to me that if a district attorney unnecessarily multiply suits against the same defendant, although no motion is made by him to consolidate, or to compel the officer to pay the unreasonable excess, it is extortionate to turn round upon the Government, which is in no fault, and exact the costs in each suit, if uncollected of the defendant—so, too, if he institute proceedings which, by reason of a defect in them, he might, with greater care, have avoided, and he is obliged to discontinue.

In cases *in rem*, in which the charge of costs is not unfrequently exorbitant, where the proceeds of the thing condemned and sold do not equal the costs, the United States ought not to make up the deficiency; yet such cases are of frequent occurrence. By way of illustration, I annex a copy of the account of sales rendered by the marshal of Alabama, marked D. It was in the case of sixty jugs of gin, condemned for violation of the revenue laws:

| | |
|---|---|
| Amount of sales - - - - - - - | $25 00 |
| Costs and charges - - - - - - - | 67 00 |
| Amount of deficiency, and due the officers of court - - | 42 00 |

I annex an account of sales, marked E, rendered by the same marshal at the same time, in the case of twelve casks of porter condemned, &c. In this case the sales exceeded the expense by a small sum; but the exhibit shows the character of such proceedings, and the strong probability that, in instances of small seizures, the United States will be the sufferer:

| | |
|---|---|
| Amount of sales - - - - - - | $114 07 |
| Amount of costs, &c. - - - - - - | 100 35 |
| Balance due the United States - - - - - | 13 72 |

The law is defective, in my opinion, as regards the payment of costs in the instances above enumerated, and requires legislative correction. One mode of obviating the difficulty is suggested by Mr. Justice Betts, of New York, in the following extract from his reply to the circular:

"One of the heaviest items of charge to the Treasury for some years past has arisen in prosecutions or seizures of vessels and goods for forfeiture. Generally, the seizure involves large amounts, yet, not unfrequently, articles of small value are attached, and nearly the same rate of expenses, as the law now stands, is incurred in the prosecution, whether the matter in demand be of little or great value, provided it be above $50.

"The court has avoided this, by standing rules in respect to arrests of property in admiralty proceedings, and, as far as the law gave powers, a similar relief has been attempted in seizure cases.

"A large portion of expense on seizures is the storage, insurance, keepers' fees, &c., the detention of the property continuing sometimes months or years, in order to obtain testimony out of the United States, or not accessible here; and although this delay is very generally at the instance of the claimants, yet they are unable or unwilling to bond the property, and the United States will not surrender it; and, on the absolute acquittal by a jury, there is no authority in the courts to impose the expenses on the claimants, and it is defrayed by the Treasury. In private suits *in rem*, rule 171 provides that this charge may be put upon the party obtaining a continuance of the cause.

"In plenary suits *in rem*, where individuals are the parties, the owner of the property can have it delivered, upon depositing in court, or securing by stipulation, enough to cover the particular demand. (Rule 54.)

"A large disbursement might be saved the United States, if Congress should adopt like regulations, so far as they may be made applicable in respect to seizures, or empower the courts to make them by rule; or what, perhaps, might be preferable, should authorize a vessel or property seized, when the parties are not ready for trial, and the claimant refuses to bond it, to be sold, and the proceeds deposited, to abide the event of the action. Some provisions of that character might relieve these cases of the greatest proportion of expenditures to which they are now subject. When the case is not appealable, the court has now directed that the marshal, by returning the goods in custody of the collector, shall be discharged of all responsibility for their safe keeping or production, to answer the decree, (rule 174,) and that saves the United States storage, keepers' fees, insurance, &c.

"A regulation, as to all seizures, that the marshal might leave the goods with the collector, on his receipt for them, would also relieve the Government or parties of those identical charges."

I may state, almost as a corollary from the view already taken of par-

ticular instances of mischief or abuse, that a strong ground of objection to the existing system, which adopts the law of costs of the respective States, is found in the very exorbitant charges tolerated by these laws in some of them. No more glaring example can be furnished than that which is found in the bill of costs already referred to—a bill of costs amounting to the sum of $1,209 60 in a suit not contested, against parties known to be insolvent, the amount of which, for that reason, was charged against the United States, and paid by the collector.

The heaviest items of this bill are for copies of the declaration $499 50, oyer $180, and other similar charges, arising under the peculiar laws and practice of New York. I have introduced, I may remark here, this and other bills of costs, in particular cases, as illustrative of the position, that there are defects in the law, if not abuses in its exercise, and the impolicy of adopting State practice and State fees, and as an explanation, in part, of the augmentation of the expenses incidental to the judicial department of the Government; but I have not adverted to them for the purpose of impugning the correctness of the officer who had the legal management of the cases on the part of the Government. It is not my province here to pass upon the correctness of his opinions as to the law or the accuracy of his accounts.

As I consider it expedient to recommend "a specific plan" in regard to the clerks of the courts of the United States, which will affect their right to receive costs, with a view to correct an existing mischief, I will, for a moment, advert to the law regulating the duties of clerks of the courts of the United States, and state the mischief, and the remedy proposed.

The clerk of the Supreme Court of the United States is appointed by the court. (Act 24th September, 1789, sec. 7.) The clerk of each district court is appointed by the district court, and is clerk of the circuit court in his district, except where Congress has otherwise expressly provided. The act of May 15, 1820, makes it the duty of the clerks of the district and circuit courts, within thirty days after the adjournment of each successive term of the said courts, respectively, to forward to the agent (now the Solicitor) of the Treasury a list of all judgments and decrees which have been entered in the said courts, respectively, during such term, to which the United States are parties, &c. The act of May 29, 1830, gives to the Solicitor of the Treasury authority to instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings appertaining to suits in which the United States is a party, or interested, and to cause them, or either of them, to report to him, from time to time, any information he may require in relation thereto.

Prompt compliance with the law is important to the interests of the Government, and to the accurate performance of the duties of the Solicitor of the Treasury. Circulars have been issued, and the necessary forms furnished; yet I regret to state that there has been great irregularity among the officers of the courts as to making the required returns. If the neglect were on the part of a district attorney, or marshal, or collector of the customs, it would be in the power, and under some circumstances be the duty, of the Solicitor of the Treasury to report the neglect to the President. The clerks of the courts of the United States, being appointed by the courts, are peculiarly responsible to the power appointing them, and a report to the President in regard to them might not be of practical advantage. If the law directing clerks to report be wise, then there should be vested some

where a power to enforce its provisions against them, and I know of no better mode than that which I propose—to withhold from the delinquent clerk his fees for the preceding quarter, unless a satisfactory reason for the neglect be given. These officers are required by law to make other reports or returns, and the provision suggested is therefore made general. The clerk of the Supreme Court of the United States is not mentioned in the acts directing the other clerks to report to the Solicitor of the Treasury. It is very obvious that the books of the Solicitor's office cannot exhibit the situation of cases in which the United States are concerned, and which may be pending in the Supreme Court; nor, indeed, can the termination and decision of such cases be known to his office, from the proper sources, unless the clerk of that court be directed by law to report in the same manner as is required of the clerks of the district and circuit courts. He should be under legal obligation to make such reports; to forward to the Solicitor all official papers which ought to be transmitted to the courts below; and to furnish copies of the opinions of the court to the Solicitor of the Treasury, or other documents, when asked for by him as necessary to the discharge of his official duty. For services so rendered, the clerk should be paid from the judiciary fund.

Before I dismiss the consideration of the duties of clerks, I refer to the following interrogatory, contained in the circular: "What is the number of suits discontinued during the past year, and what the amount of costs to each officer in such cases?"

The answer of the clerk of the southern district of New York is thus: "I would reply, by stating that common-law actions are settled and discontinued by the district attorney, at his discretion, and require no order of court or entry on the minutes, (other than rule entered by party in rule book,) and accordingly I am unable to state with certainty how many such actions have been discontinued. When such suits are discontinued, I am in no way informed of the amount of the costs paid, it not being necessary, in our practice, to file the bills of costs with the clerk."

The discretion of the attorney is not quite so unlimited as the answer indicates; for it is a rule of this office that no suits shall be discontinued until a statement of facts has been submitted to it by the attorney, accompanied with his opinion thereon; he is then directed to discontinue or not, as may be the judgment of the Solicitor of the Treasury in the case presented. This is a slight error, for which the clerk is very excusable. The important facts which the answer discloses are, the want of any entry by the clerk on his books of the amount of costs paid, and by whom, in a discontinued suit, and his inability to determine the number of such suits in a given period. Unless there be an entry of the sort, by way of check, how is it to be ascertained that the costs have not been paid by the United States and by the defendants also? In regard to the amount of costs paid by defendants, in cases where the United States were plaintiffs, within three years past, I have obtained but very unimportant information; the answers show that, during the year, prior to the date of the circular, the costs so received were inconsiderable.

Before coming to consider particularly of the remedies or specific plans required to be reported, I will briefly enumerate the sources of the increased judicial expenses of the Government, taking occasion to introduce some remarks upon this point and the main subject under consideration furnished by replies received, and which are proper to present, not only be-

cause of their intrinsic merit, but on account of the value of the opinions of eminent judges on questions with which they are familiar. In the answer received from Mr. Justice Story, he makes the following valuable remarks:

"My own judgment has, for many years, been, that Congress ought to pass a general law making the taxation of costs and fees uniform in all the courts of the United States, and wholly independent of the State practice. I have been constantly in the habit, for many years, of making suggestions upon the subject to members of Congress, but hitherto without success. One of two courses should be pursued—either for Congress to prescribe a fee bill for all cases in the courts of the United States in detail, or to require the Supreme Court, by rules, to establish a table of fees from time to time, which shall be uniform in all the courts, and shall be all the fees that shall be chargeable. The latter course would be burdensome upon the judges; but, if Congress would direct regular returns to be made of all the fees now taxed in all the courts, of every class of cases, I have no doubt that the judges of the Supreme Court would cheerfully, upon such returns being made to them, undertake the labor. However, I have no right to speak upon the subject except for myself.

"In relation to the increased amount of the incidental expenses of the judicial establishment of the United States since 1820, there are various causes which may serve to explain it, independent of any supposed abuses:

"1. The population has increased from about nine millions to seventeen millions.

"2. Several new circuit courts have been created, and two additional judges appointed on the Supreme Court bench.

"3. Several new district courts have been created in the old States.

"4. Several new Territories have been organized, with all their judicial establishments. The business of some of these new Territories has been extremely large, owing to the peculiar structure of their land titles.

"5. But, from other general causes the business in the courts of the United States has, in most if not all in the circuit and district courts, greatly increased. This has resulted partly from the vastly multiplied commerce and commercial transactions between the different States of the Union, and between them and foreign countries; partly from the variety of laws passed by Congress, requiring judicial interpretation; partly from the extended operation of admiralty and equity suits in the courts of the United States; and partly from the increased magnitude and difficulty of the causes which are litigated in the courts requiring more protracted sessions, and of course greater expenses. In my own circuit the business has more than doubled, both in amount and difficulty within the last twenty years; and if I had not been accustomed constantly to hold adjourned courts, as well as to hear causes at chambers, and upon written arguments, within this period, the accumulated mass of business would have become so great as to occasion a practical denial of justice. The docket entries of each term do not present a full view of the matter; for a great many of the causes entered *at one term are, in my circuit, finally decided in the course of the same term.*

"I ought not to omit to mention another great increase of expense to the United States, which results from the great defects of its criminal jurisprudence, and the manner in which that jurisprudence is vested. The crimes committed on the high seas have immeasurably increased within the last

twenty years, from various causes, which need not be enumerated. The whole jurisdiction (practically speaking) to try all crimes, is exclusively vested in the circuit courts. It is well known that the circuit courts sit only twice a year; and, consequently, whenever any vessels arrive in vacation, or after the grand jury are dismissed, the prisoners as well as all the material witnesses are necessarily, to prevent a total failure of justice, detained in prison at the expense of the United States for a great length of time—sometimes four or five, or even six months. Now, if the district court had, as in my judgment they ought to have, concurrent criminal jurisdiction with the circuit courts, and were required, when the business required it, to hold monthly adjournments, I am persuaded that many thousands of dollars would be saved to the public, and the public convenience, as well as the proper administration of justice, be greatly promoted.

"I think it proper to add, that, for several years last past, this subject has been submitted to the consideration of the Judiciary Committee of at least one branch of Congress, and, though favorably entertained by that committee, no act has as yet been passed upon the subject.

"I take the liberty of suggesting, although not within the scope of your communication, that the present criminal code of the United States is grossly defective, and utterly inadequate to the public administration of justice. Many atrocious crimes may now be committed on the high seas, and which are not punishable in any tribunal whatsoever. It appears to me that the criminal code of the United States ought to be revised, and consolidated into a single statute."

These opinions of Judge Story are entitled to grave consideration. Some of the difficulties to which he adverts, it was the design of the act of August 23, 1842, to remedy; but I have thought it proper to extract the portion I have given, for the purpose of showing wherein some of the heavy expenses, in years past, incident to the administration of justice, consisted.

Mr. Justice Wells, of Missouri, expresses himself thus: "As far as the courts of the United States for the State of Missouri are concerned, I cannot consent to the principle set forth in the preamble to the resolutions of the House, that, because the appropriations for the Judiciary for 1840 are a little more than double those for 1824, there must necessarily be *abuses*. In 1824, the State of Missouri was entitled to but one Representative, and in 1840 was entitled, according to the increased ratio proposed by the House, to seven; and the trade and business of the State was in 1840 twenty times as great as in 1824. Why should not the business of the courts, and of course the expenses, also increase?"

The question is well put; for unquestionably the increase of the country has augmented litigation in the courts of the United States, and, at the same time, by enlarging the judicial machinery of the Union, caused a corresponding demand on the public Treasury.

Mr. Justice McLean gives it as his opinion, "that the increase of business within ten years, in the three Western circuits of the courts of the United States, is equal to all the business of all the circuits in 1824, and there has been an increase in the number of causes in all the other circuits. A comparison will probably show that the increase of expense is not equal to the business of the courts. But I have no doubt that abuses exist, which ought to be corrected, in the taxation of costs; and that the expenditures generally may be reduced, without impairing the administration of justice."

Giving to these reasons their proper credit, I proceed to the main causes of expenditures, besides those which they suggest, as developed in the reports received by me and in other documents:

1st. The first source to which I shall allude is compensation to counsel for assisting district attorneys in suits wherein the United States were interested. By a statement prepared by the Register of the Treasury, herewith annexed, (marked F,) it appears that from the 4th of March, 1829, to June 22, 1842, there had been paid to assistant counsel in such cases the sum of $28,984 31. (House Doc. No. 260, 27th Cong., 2d session.) The amount so paid, it will be perceived, is not very considerable, and cases do occur in which it is absolutely necessary to employ counsel other than the district attorney; as where he, before his appointment, was of counsel for the opposite party. So it sometimes happens, that a case is of magnitude, and there are such circumstances connected with it, that it becomes important for the interest of the United States that counsel should be retained, to assist the district attorney. In either case, great care is taken in this office to prevent unreasonable charges. The practice has been, for the most part, to make with the counsel retained a previous agreement.

2d. In some circuits, law books have been purchased for the use of the court and bar; the amount is small, probably, and not uselessly expended, but still constitutes an item of expense not indispensably necessary to the business of the court.

3d. Another source of expense is the practice of suing all debtors and defaulting officers without inquiring whether they are solvent or insolvent, or able to pay costs even. The United States attorney for the northern district of Mississippi informs me that in his district the United States have become responsible, within the last two or three years, for between four and six thousand dollars, by way of costs, for suits against insolvent debtors or defaulters; and that they have not collected, in the mean time, fifteen hundred dollars on execution. In his district, twenty-seven suits were discontinued during the year preceding his answer, but the costs had not been ascertained by him.

Mr. Justice Crawford, of Alabama, remarks that "the useless expenditure by the Government, in the courts in which I preside, has arisen, for a number of years, from suits, by the United States, against individuals totally insolvent, and in some cases against persons living out of the district. The costs have been paid by the Government in above nine-tenths of the cases instituted by the United States, after the return of *nulla bona*. The proper remedy for this evil I suppose to be a sound discretion, to be exercised by the proper officers of the United States. If they cannot now exercise this discretion, I think it ought to be conferred by law."

It is so difficult to devise a remedy to restrain the useless expenditure to which Judge Crawford refers, which would effectually correct the mischiefs, and not lead to abuse, that while I present the suggestion itself, I have not ventured to propose one.

4th. The chief items of expenditure are the per diem compensation of the officers of the court, jurors and witnesses' fees, the rent of court and jury rooms, fuel, lights, stationery, the board and transmission of prisoners in criminal causes, and medical attendance on them, their clothing, and, in some parts of the country, the expense of guarding them.

The district attorney of East Florida ascribes a great portion of the expense in his district to the want of a court-house, with jury rooms, and a

jail in the counties where a court is required to be held; and he cites instances where prisoners have been kept under a strong guard, at great expense, there being no jail in which to confine them.

Mr. Justice Bronson, of the same district, confirms the statement of the district attorney, and adds: "I verily believe that the United States have paid enough for the rent of court-houses, and for guards, in lieu of jails, within the last five years, in this district, to defray the expenses of building at least two substantial court-houses and jails."

In regard to those incidental expenses, I am not prepared to say that they can be materially diminished; nor can I recommend that the per diem compensation and the annual salary which *all* district attorneys now receive, excepting the attorney for the southern district of New York, be abolished. Without the per diem, it would be almost impracticable, in many parts of the country, to find individuals of competent ability to fill the offices to which that compensation is now by law attached. On this point the evidence contained in the various reports received by me is clear and abundant.

Before dismissing this part of the subject, it seems to me right that I should present one of the inconveniences of the adoption of the State laws by the courts of the United States. It is the great delay to which the Government is and may be subjected, in collecting the sums due to it, and the increased costs thereby produced. Thus, in Arkansas, a rule has been adopted by the district and circuit courts, that executions and other final process, and the proceedings thereupon, shall be the same as are now used in the courts of the State—embracing, it is presumed, the whole list of local relief laws. If the United States are to be subjected to and restrained by this rule in proceedings to which they are a party, this will be the practical result in Arkansas, as I am informed by the United States attorney for that district.

"By the statutes and usages of this State, such process must be made returnable *in term* under one writ of execution; the party may give a forthcoming bond, and forfeit it, without incurring any damages or penalty; under another, he may have the property seized, appraised, and it cannot be sold unless it brings two-thirds of its value so found, which amount it rarely brings; it is then twelve months after the return of the second writ before a third can be issued; then, if no unusual action is had, the money may be had at the return of the third execution, at the end of *thirty months* from the date of the judgment in the district court. In the circuit court, by the same proceeding and delay, which is generally practised, the money could not be made until the end of *four years from and after the date of the judgment.*"

If such laws are to be extensively adopted, and similar ones are rapidly creeping into favor, the General Government will be at the mercy of State legislation, and exposed perhaps to no inconsiderable embarrassment in collecting its debts. At any rate, the various provisions of law directing courts of the United States to grant judgment in the specified cases at the return term become, for all practical purposes, wholly inapt for the purpose of despatch.

I am now brought to the third head of inquiry.

3d. What are the proper remedies for the mischiefs which exist, and herein of the "specific plans" for the remedy of these mischiefs required to be adopted? Under this head I submit a draught of a bill, entitled "An act

to fix, ascertain, and regulate fees and costs to be allowed to the attorneys, clerks, and marshals of the United States, and to jurors and witnesses, in the courts of the United States, and for other purposes;" and can best discuss and explain the remedies proposed by considering each section in its order. This I proceed to do.

### Section 1.

The first section of the bill proposes a fee bill, to govern in the taxation of costs in all the courts of the United States, not from the conviction that any general law can be devised which will operate justly and equally in every district. The known diversities in the circumstances of the different districts, in my judgment, would make it very difficult, if not impossible, to accomplish satisfactorily such a work. But it is presented as a better temporary rule of action than the extremely defective systems which now prevail. It is not proposed as a permanent measure, as it will be perceived, but to endure until a proper fee bill, for each district and circuit, adapted to its particular circumstances, shall be prepared and adopted, in the mode provided in the second section of the bill.

Of the fee bill thus proposed I would remark, that the items are higher than those allowed in some of the districts, and lower than in others. It also limits the amount of certain charges, and wholly cuts off others, now permitted. It may, in some instances, allow too much—certainly in some of the districts; but, in a temporary measure of this sort, it was considered best to err in making an allowance somewhat too liberal for such districts, rather than, by restricting too much, to run the risk of "impairing the efficient action of the judiciary."

### Section 2.

This section proposes a mode by which a proper fee bill, having regard to the particular laws and circumstances of each district, may be formed. The district judge is designated as the proper person to form such a bill. His local knowledge and experience will enable him properly to discharge this duty. But it is supposed that, as the United States are to be affected by the fee bill, it is but proper that his work should be subjected to a revision of a board, composed of officers whose duties require that they should understand the nature and extent of the expenditures which have been heretofore made, and also the general principles and practice of the laws and courts on this subject. With this view, it is proposed that the Secretary of the Treasury, the Attorney General of the United States, and the Solicitor of the Treasury, should constitute such a board.

The district judge will report proper fees for such services as may be required by the laws and practice of the courts of his district, which are by no means the same in every district; and should his local views lead to any extravagance, or be likely to produce an improper expenditure of the public money, the board proposed would moderate, restrain, and correct improper items. Besides which, as every district judge in the United States is required to report a fee bill for his district, the board would, before they adopted any, have the advantage of comparing the different bills reported, and the opportunity of making improvements, by a general and comparative view of the subject.

It will be observed that, although the section enjoins the duty, it does

not fix any time within which it is to be performed. Whether this should be done, is a question submitted. The section can be readily amended in this particular, if it be thought expedient.

SECTION 3.

A proper deference for the judges of the Supreme Court of the United States seems to require that the establishment of a fee bill, for services in that court, should be formed by them without revision. None are so well acquainted with the duties of its officers and the services they are required to perform, and none can more properly fix a suitable compensation for them. It is but right, however, when this court has adopted a fee bill, that a copy of it should be furnished the Treasury Department, that care may be taken that the charges made conform to the bill; and the section contains a provision to this effect.

SECTIONS 4 and 5.

These two sections require that the clerk of the Supreme Court should report to the Solicitor of the Treasury, as clerks of the district and circuit courts are now by law required to do; and, particularly, that he should furnish, in cases where the United States are concerned, such orders, decrees, and records, as are necessary for further proceedings in the courts below, which are conducted under the direction of the Solicitor of the Treasury. It is also required that opinions, &c., of the court should be furnished to the Solicitor of the Treasury when wanted. The rate of compensation for such copies should be fixed, and the amount paid out of the judiciary fund. It is supposed to be right to present these sections thus enjoining new duties, as these duties are the proper subject for the allowance of fees, and should be embraced in the law of costs. That the clerk of this court should perform them, has been ascertained in practice to be material to a systematic discharge of the duties required to be performed by the Solicitor of the Treasury. If, when the Supreme Court remands a case for further proceedings, regular notice were given to his office, he would at once resume the charge of the case, and see that proper proceedings were taken to advance the interests of the Government. It frequently occurs that copies of the opinions of the Supreme Court are wanted before the reports of the decisions are published, to enable the inferior court to proceed in the cases.

SECTION 6.

This section is intended to prevent charges for fictitious services, and for compensatory or double fees. The fee bill should ascertain what services are actually required to be performed, and fix a precise sum or rate to be charged for them. No charge for a service not actually required, or for a service not actually performed, should be permitted. It is better that the officer should be sometimes without a fee for a particular service not specified in the fee bill (which, too, may be amended when it is found defective) than that he should be permitted to charge compensatory fees for services not enumerated—a practice liable to much abuse. It is equally plain, that a charge which the fee bill allows to be made should not be

doubled, because the same service may relate to different suits or proceedings, or to different courts. Hence, this section forbids double fees, &c.

SECTION 7.

The seventh section is designed to remove all obscurity, if there be any, as to the duty of the district attorney, and will prevent the recurrence of the mischiefs already noticed, of charging fees for services in cases where the United States are concerned, although not a party of record, when such cases are in the courts of the United States. These cases often occur. It distinctly assumes what the opinion of Mr. Wirt declared to be the law, that the district attorney is not bound to attend to the interests of the United States in the State courts. If engaged in such cases, he must be compensated as any other attorney would be; and this has been the practice of the Government. Unless it be so, in many districts it would be difficult to get a competent person to hold the office.

But a new provision is inserted, that it shall be the duty of the district attorney, under particular circumstances, to attend to the cases of the United States in the *State courts*. It fixes the rule for his compensation in such cases, but confines it in amount to the maximum provided by the act of the 18th May, 1842; excluding from the computation commissions proposed to be allowed for moneys collected, for the obvious reason that such commissions, being an incentive to action, are as important, if not more so, for this purpose, in districts where the business is large as where it is small.

SECTION 8.

It has been frequently observed, in the reports of cases made from time to time to this office, that the charge of costs in proceedings *in rem*, to which this section relates, is in some districts very high, amounting not unfrequently to a sum which exceeds the whole amount of the proceeds of sale of the thing condemned. The excess is a charge to the Government. (See Exhibit No. 1.)

To guard against this, instructions have been heretofore issued by me, to include a number of small seizures, made at different times, in one proceeding, where there is no likelihood that a claim will be interposed by any body.

But as this, for obvious reasons, is an effectual remedy, it is suggested that it would be best at once to provide, that in such cases the United States shall not be charged with costs. A necessary power is given to the courts to apportion the proceeds among the officers entitled to costs, according to a fair rule, having regard to the value of their respective services.

The charges in proceedings *in rem* are greatly increased by fees for the care of the thing seized to the time of condemnation and sale. These may be greatly curtailed, either by permitting the custody to remain with the collector of the port, or by clothing the court before which such case is pending with power to decree a sale, and the deposite of the avails to abide the final decree. A like power, in the case of individuals, is exercised by rule of court in the southern district of New York, and in some of the States, at least, in cases of foreign attachment.

SECTION 9.

The object of this section is fully explained in the general remarks already submitted, and they need not to be repeated here.

SECTION 10.

This section is intended to correct a practice already noticed, of demanding and receiving costs from the United States before the final termination of the proceeding in which they accrue, and to secure the repayment into the Treasury of the costs ultimately recovered against the adverse party liable to pay them, but who, at the time he was fixed for them, could not be coerced to pay them, for want of property. If the law be so amended by Congress, a considerable sum, it is believed, will be saved to the United States; besides, it will be just in itself, and expedient, as prompting the officers to greater diligence in the discharge of their duties.

SECTIONS 11 and 12.

The want of the powers proposed by these sections to be conferred upon the office of the Solicitor of the Treasury has been much felt in practice, and district attorneys have urged, either that they should be exercised, or, if the office had not the power, that it should be asked of Congress. They are introduced into the bill, not only on account of their importance, but because, if conferred, their exercise will affect the judicial expenses, not indeed by a charge upon the fund expressly appropriated for the purpose, but by deductions out of the amount of outstanding debts.

These powers are—

1st. Authority to appoint an agent for the purpose of buying in at any sale on execution, at the suit of the United States, personal estate, for the use of the United States, in the same manner as real estate can now be purchased.

2d. Authority to appoint an agent to attend to the interests of the United States in cases where the ordinary judicial proceedings, conducted by the district attorney, have failed, or are not likely to effect a recovery of the amount due.

The want of the first has been experienced in cases where defendants, in failing circumstances, have made colorable assignments of their personal property, and where, under notice of such assignments, no adequate price could be obtained for it; or when, for any other reason, such property is sold much below its value, and for an amount insufficient to discharge the debt. Several such cases have occurred; and it is believed that large sums, lost to the United States, might have been saved, if this power had existed, and been judiciously exercised.

The importance of both powers was fully discussed in the general report which I had the honor to make to the Secretary of the Treasury at the last session of Congress, a copy of which, I believe, was furnished to a committee of the House of Representatives.

In that report an estimate was made of the aggregate value of the business in charge of the Solicitor's office. It will be seen that it then amounted to the very large sum of twelve millions nine hundred and fifty-seven thousand seven hundred and sixty-nine dollars and eighty-seven cents, ex-

clusive of that involved in suits called "miscellaneous," which number one hundred and sixty-four. From this sum, if we deduct the estimated value of the lands in charge of the office, and of lands the titles to which were in suit under its charge, (two millions two hundred thousand dollars,) it will be perceived that there remains the large sum of ten millions seven hundred and fifty-one thousand seven hundred and sixty-nine dollars and eighty-seven cents, which was then outstanding, due to the United States, and in suit.

Much of this sum has been outstanding for many years; much no doubt lost by the insolvency of the parties; and the collection of much of it has been hindered and embarrassed by assignments, sometimes fraudulent, passing the property into the hands of assignees; by the death of trustees, and the substitution of others; by the circumstance, whether the debtors died testate or intestate; by the administration of estates; and by all the various modes which the contingencies in the affairs of men interpose to delay and hinder the satisfaction of debts. Many such cases require a kind of agency which private persons employ, but which is very different in its nature from the duties required of a district attorney; and it is just such an agency which these sections would permit to be created.

The district attorney of North Carolina, in a letter to the Solicitor of the Treasury, urging that he should ask Congress for the power to appoint such an agent in regard to cases in that State, says he believes that from forty to fifty thousand dollars might be collected in that district if he had the aid of such an agency, and which otherwise will be lost.

It is proposed not to permit the appointment of such agent before the lapse of three years from the institution of proceedings to collect a debt, assuming that the ordinary judicial steps would be taken during that time, and that they should be exhausted before resorting to the appointment of an agent. It is, however, a question, whether this should not be left to the discretion of the Solicitor, as cases may occur in which it would be expedient to make such appointment, either before suit brought, or soon after it is instituted.

The provision for compensation in these cases fixes not only the highest rate to be given, but makes the compensation depend upon the recovery of the debt, inasmuch as it is to be paid out of the amount recovered.

### Section 13.

The reasons which govern in presenting the eleventh and twelfth sections apply to this also. Of the very large amount of outstanding debts already noticed, much, as previously observed, is of long standing; and, although a great proportion may be regarded as hopeless, yet no inconsiderable sum would be gleaned if there were a mode by which to stimulate the efforts of those who are required to labor in this vast field of unsatisfied claims.

It is no doubt the duty of the several district attorneys to perform this service; but the ordinary costs of suit (a very inadequate compensation for the labor required, in old cases particularly, where there are assignments, wills, and the like) have, in very many instances, been paid to predecessors of present incumbents; and in such cases the duty is required, but no compensation is given.

Under such circumstances, it is hardly to be expected that more than or-

dinary diligence will be bestowed upon the work, though these cases require great labor, research, and skill. It is reasonable, as well as expedient, that a district attorney should be compensated for extraordinary services which result successfully, more particularly as this compensation is to be made out of the fund recovered.

The subject was brought to the notice of the House of Representatives in a communication from one of my predecessors, in whose views I concur. His proposition, like that which I make, was to allow a suitable commission on collections, to be paid out of the money recovered.

The reasoning in support of the proposition applies more particularly to stale demands, or demands of long standing. It is not, however, deemed expedient to confine the payment of commissions to such cases only. It would not do, in practice, to permit it to be the interest of the officer to suffer cases to stand over until they fell within a rule of compensation applicable only to delayed cases, lest, in seeking a proper incentive for effort in old, a motive for neglect of fresh cases should be found.

To guard against this, it is proposed that commissions be allowed in all cases; the rate of percentage being different according to the age of the demand.

I may add, that I regard this mode of compensation of the officers in question as the very best. It accords with the general practice of the profession, where individuals are the parties; and I infer, from the fact that it is adopted in several States for the collection of State demands, that it has been found to be beneficial and expedient.

The section further provides for a stipulation in the nature of an official bond, to be entered into by the several district attorneys, to secure the faithful performance of the duties of the office, &c.

As a general rule, and by the regulations adopted by this office, the district attorney is not a receiving officer; but, in practice, it has frequently happened that public money has passed into his hands.

Instances have occurred of losses to the United States from the insolvency or inability of the district attorney to pay the amount received by him. For this reason, it is proposed that he should give security for the faithful discharge of his official duty.

The form of this security, although not unknown in some of the States, is novel in the practice of the United States. I consider it a decided improvement upon the plan of an official bond. The penalty of the latter may be fixed so high as to make it difficult to procure competent security; while the penalty itself, limiting liability to the extent of it, is often insufficient to cover the amount of damages for the condition broken.

### Sections 14 and 15.

The objects proposed by these sections are palpable, and their propriety seems to require no comment.

Before closing this report, I think it right to present two suggestions, without venturing to include them among the specific plans contained in the bill proposed; both of which, however, I regard as sufficiently important to be submitted for the consideration of the House of Representatives, and which, if adopted, would operate, in my judgment, beneficially in practice.

The one is, that all accounts for the judicial expenses of the United

States ought to be submitted to the revision of this office. Reports of these proceedings themselves are made to it, and records of them are here preserved. Besides the advantage which a knowledge of the law of the case furnishes, these records afford the means of detecting wrong charges, if any such should occur. After such revision, they might be submitted to the Auditor, or not, as Congress may judge to be expedient.

Should this suggestion be adopted, it would of course require that proper provision be made to carry it into effect; and this might be done without adding materially, if at all, to the expense of the Government.

Another suggestion is, that an annual report of the business of this office should be made.

Of that report, the judicial expenses of the Government would, of course, form a part, although it would by no means be the most important part. Almost the only knowledge which is now obtained by Congress of the important interests of the United States in charge of this office, which are involved in the administration of justice, is to be gathered "from the remarks of the Solicitor of the Treasury," which are attached to the reports of the different Auditors, made at different times, and found in different places.

It was my desire to have presented with this report a precise statement of the whole amount paid in a period of three years, in the shape of fees and emoluments, by individuals as well as the United States, to the judicial officers of the Government, from which an accurate table might be prepared, exhibiting the various heads of expenditure, and the amount applied to each; and interrogatories for this purpose were prepared, and are included in the circular. But the information obtained in reply is so imperfect that I have been constrained to abandon this plan. At my request, a table, so far as it can be furnished by the accounting officers, of such expenditures for a single year, is in the course of preparation; and when it is obtained, I will communicate it to you, that it may be transmitted, as a document to be connected with this report, to the House of Representatives.

I have thus endeavored to meet the wishes of the House, by "an examination into the judicial expenses of the Government, and the laws and usages under which they are made."

I have, as directed, inquired into and reported: first, what amendments are required in the law of costs; secondly, whether any and what provision should be made by law to regulate the nature, allowance, and payment of the contingent expenses of the courts.

But it will be perceived that the nature of the information received will not justify a recommendation "to abolish all per diem allowance for officers." Whether such allowance can be dispensed with in particular districts, will, of course, be the subject of consideration in the preparation of the fee bill for each district, in the manner proposed in the bill submitted. Nor have I been able to discover that any alteration can be made advantageously, by law, "in the length of time occupied in the actual sessions of the court, and in the attendance from day to day of jurors and witnesses." It would be dangerous, in view of "the wholesome action of the Judiciary," to attempt, by any general rule, to fetter the discretion of the court in the ordinary and practical administration of justice.

I may offer as an apology, as well for the delay as the imperfections of the delicate work which I have endeavored to perform, the omission of some and the tardiness of others in replying to the circular addressed to

them, and the very limited information which, generally speaking, these replies afford; although it is but just to say that an excuse for the latter particular is found in the fact that many of the officers addressed were of recent appointment.

I cheerfully acknowledge, however, that there are valuable exceptions to the general character of these reports. Some of them contain interesting information. From among these I have selected and appended hereto the following, which are favorable specimens of their general character, containing some suggestions not precisely within my appropriate duty formally to consider, but which, nevertheless, may be worthy of notice:

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|---|---|---|---|---|---|---|---|
| Report of U. S. attorney | for the | southern | district of | New York, | marked | G. |
| " | " | " | eastern | " | Pennsylvania, | " | H. |
| " | " | " | " | " | Illinois, | " | L. |
| " | " | " | western | " | Louisiana, | " | J. |
| " | " | " | " | " | Iowa, | " | K. |

All of which is repectfully submitted.

Very respectfully,

CHARLES B. PENROSE,
*Solicitor of the Treasury.*

Hon. WALTER FORWARD.
*Secretary of the Treasury.*

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AN ACT to fix, ascertain, and regulate fees and costs, to be allowed to the attorneys, clerks, and marshals of the United States, and to jurors and witnesses in the courts of the United States, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, until the adoption of a fee bill for each judicial district of the United States, as hereinafter provided, the fees of the several officers of the United States, and persons herein specified, shall be the same as are hereinafter ascertained and limited; and, after the adoption of the fee bill for each district, to be prepared in the manner hereinafter described, the fees of the officers and persons therein specified shall be as the same may be ascertained and limited in each district fee bill.

The fees to be received by the district attorney of the United States shall be as follows, to wit:

For every declaration, or statement in nature of a declaration, five dollars.

For every libel of information on the exchequer side of the court, twelve dollars.

For every libel in admiralty, and preparing the interrogatories, eighteen dollars.

For the preliminary examination in every criminal case, five dollars.

For the complaint in every criminal case, three dollars.

For all other services, in every criminal case, ten dollars.

For every suit in equity, thirty dollars.

For attendance in the courts of the United States, within his district, which he shall attend on behalf of the United States, five dollars per day.

For travelling from his place of abode to the place wherein the court is holden, and back again, once each way, at every term he shall attend on behalf of the United States, at the rate of five cents per mile.

The said attorney shall be allowed five cents per folio of one hundred words, for copies of all papers and proceedings which are required by the rules or orders of the court to be made by attorneys, not exceeding the sum of ten dollars in any one cause.

No attorney of the United States shall either directly or indirectly demand, take, or receive, any greater or other fee, in the said suits, unless the Secretary of the Treasury shall allow, in extraordinary cases, [that] an extra compensation is reasonable and proper.

Each district attorney of the United States shall be entitled to an annual compensation of two hundred dollars.

The fees to be received by the clerks of the circuit, district, and territorial courts of the United States, shall be as follows, to wit:

For entry on the calendar or docket of the court, of every action at law, or note of issue in equity, in admiralty on the exchequer side of the court, and in criminal proceedings of every description, including all services at the first term not hereinafter provided for, five dollars.

For continuance, fifty cents.

For services at every term, not hereinafter provided for, other than the first and last term the case is in court, one dollar.

For filing and recording, and all services at the last term a case is in court, three dollars.

For every warrant of commitment in criminal cases, one dollar.

For every recognisance of a witness, fifty cents.

For chancery proceedings, double the above fees shall be allowed, and taxed to the said clerks, except the entry fee.

For every commission to take evidence, two dollars.

For filing any deposition, or other paper, ten cents.

For a certificate and seal, one dollar.

For copies of all papers furnished by said clerks, when required by law or an order or rule of court, or by a party interested, five cents per folio of one hundred words, not exceeding the sum of ten dollars in any one case.

For attendance at any circuit or district court, five dollars per day.

For travel from the clerk's place of abode to either of said courts, and back again, once each way, at every term of said courts, at the rate of five cents per mile.

The clerk of the Supreme Court of the United States shall receive double the fees which are taxed and allowed to the clerks of the circuit courts for similar services; and for such services as are not performed by the clerks of the circuit courts, such compensation as the Supreme Court shall establish.

The fees to be received by the marshals of the United States, for the several districts, shall be as follows, to wit:

For service on every defendant named in a writ or declaration, warrant, attachment, or process, one dollar.

For travel, for serving either of such processes, from the place of holding the court to place of service, and back, five cents a mile; but if more persons than one are named therein, the travel shall be computed from the court to the place of service which shall be most remote, adding thereto extra travel which shall be necessary to serve it on the others.

For service of execution, the same fees and travel.

For taking custody of goods, or merchandise, or vessel, two dollars.

For custody of the same, if kept by him, two dollars per day.

For arrest of an individual on information, two dollars.

For service of monition, two dollars; and for travel in these four last instances, five cents per mile each way, from the place of holding the court to the place of service.

For service of a criminal process, on each defendant, two dollars.

For committing or discharging a prisoner, fifty cents; and in these two cases travelling fees as aforesaid.

For summoning witnesses or appraisers, each fifty cents.

For summoning each grand and petit jury, four dollars and mileage as before limited; provided that the same shall not exceed fifty dollars for any one court.

No mileage or travelling fee shall be chargeable by marshals in cases where the process is issued from another district, except the travel he actually performs, in which case their accounts for mileage, against the United States or the Postmaster General, shall be verified by their oath, or the oath of their deputy or deputies, that the travel was actually performed.

For poundage or commissions on moneys actually collected on execution to be paid by the defendants, the marshal shall be entitled to receive as follows, to wit:

On the first five hundred dollars, two and a half per centum. On all sums above five hundred dollars, one and one-fourth per centum.

The fees to be received by jurors and witnesses in the courts of the the United States shall be as follows, to wit:

To each grand and other juror, for each day he shall attend in court, one dollar and twenty-five cents; and for travelling, at the rate of five cents per mile, from their respective places of abode to the place where the court is holden, and the like allowance for returning.

To the witnesses summoned in any court of the United States, the same allowance as is provided for jurors and appraisers.

The fees to be received by the cryers and bailiffs of the courts of the United States, shall be as follows, to wit:

Two dollars per day, while actually attending court. If an extra number of bailiffs be necessary on any emergency, the clerks are hereby authorized to appoint such number as may be required for the occasion, who shall be paid the same as the permanent bailiffs, while actually in the employ of the clerk.

Sec. 2. *And be it further enacted*, That it shall be the duty of the judge of each district court of the United States, and the judges of the several courts of the United States in the District of Columbia and of the Territories, respectively, to prepare a fee bill for their several districts or territories, in which shall be ascertained and limited the fees to be received in each district or territory, by the district attorney, marshal, and clerks of the courts, and by the jurors and witnesses therein, and by such other persons as may be employed in the administration of justice, except the judges, which fee bill, so prepared, shall, by such judge or judges, respectively, be transmitted to the Secretary of the Treasury of the United States, who shall submit the same to the consideration of a board to consist of such Secretary, the Attorney General of the United States, and the Solicitor of the Treasury; which board shall have power to modify or change, and adopt the fee bill for such district or territory, and certify the fee bill, so adopted, to the said judges, respectively, who shall cause the same to be entered of record and published; and the same shall be the fee bill of such district or

territory from and after the same is so entered of record; and if, at any time, it shall be ascertained, in practice, that such fee bill is defective, the said judge or judges may transmit to the Secretary of the Treasury an amendment or alteration thereof, who shall submit the same to the aforesaid board, to be modified, adopted, or rejected by them, and therein to certify their decision to the said judge or judges, who, if an amendment be adopted, shall cause the same to be entered of record and published; and the amendment shall constitute a part of the fee bill for such district or territory from and after the amendment is so entered of record; and the fee bill of the district shall be the fee bill of the circuit court of the United States setting therein. Any expense which may be incurred in the publication of such fee bill shall be paid by the marshal of the proper district or territory, out of the funds in his hands for the payment of judicial expenses.

SEC. 3. *And be it further enacted*, That the judges of the Supreme Court of the United States shall, by rule of court, ordain and establish a fee bill ascertaining, limiting, and appointing the fees to be received by the officers and persons employed in and about the business of that court; and the said court is hereby authorized to modify or change the same from time to time, and shall cause the clerk of said court to furnish a copy of the said fee bill, and of any modification thereof, to the Secretary of the Treasury.

SEC. 4. *And be it further enacted*, That the Solicitor of the Treasury shall have power to instruct the clerk of the Supreme Court of the United States, as well as the clerks of the circuit and district courts, in all matters and proceedings appertaining to suits in which the United States is a party, or interested, and to require said clerk to report, from time to time, any information he may ask in relation to the same: *Provided, however*, That such instruction shall not interfere with any direction of the Attorney General or order of said court.

SEC. 5. *And be it further enacted*, That it shall be the duty of the clerk of the said Supreme Court, at the end of each term thereof, to report to the Solicitor of the Treasury all cases pending at such term, in which the United States were concerned, and the judgments, decrees, or orders therein, and to furnish the said Solicitor of the Treasury with such records, orders, and decrees, as may be necessary for further proceedings in such cases in the courts from which they were removed. And it shall be the duty of the said clerk, on the requisition of said Solicitor, to furnish him, from time to time, with copies of any opinion or decision of said Supreme Court, or other document necessary to the discharge of his official duty, for which the said clerk shall be entitled to charge at the rate of ten cents per folio of one hundred words, which shall be paid to him, out of the fund for judicial expenses, as costs are now by law paid to him by the United States.

SEC. 6. *And be it further enacted*, That no officer whose fees are or shall be limited and appointed, by this act, or in the respective fee bills of the Supreme and district or Territorial courts of the United States, adopted as herein provided for, shall take greater or other fees than are in this act, or in such fee bills, expressed and limited, for any service to be done by him in his office; nor shall he charge, or demand and take, any of the fees ascertained and limited, where the business for which such fees are charged shall not have been actually done and performed; nor shall he charge or demand a fee for any service or services other than those expressly provided for by this act, or in such fee bills; nor shall double fees, or more than

one fee for one service nor compensatory fees, nor fees for services not specified in such fee bill, be allowed in any case.

The accounts of the district attorneys, clerks, and marshals, in all proceedings to which the United States are a party, or in which they are interested, though not a party of record, shall be verified by oath, that the services therein charged to be rendered were actually performed, and that each item of disbursement was fair and reasonable.

SEC. 7. *Be it further enacted*, That it shall be the duty of the district attorney of the United States to prosecute, in his proper district, all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, whether named as a party on the record or not, in all courts of the United States, except before the Supreme Court in the district in which that court shall be holden. And it shall be the duty of the said district attorney to attend to any case in which the United States is concerned, whether as a party of record or not, in any State court, when the session of such court shall be holden within fifty miles of the place of residence of such attorney, when required so to do by the Solicitor of the Treasury; and in every such case, besides his taxed costs, he shall receive such reasonable fee as, upon the certificate of the chief judge of the said court, the Solicitor of the Treasury shall decide to be a proper compensation for his services: *Provided, however*, That the amount so paid to him, together with his receipts for fees and emoluments from other sources, except commissions allowed by the provisions of this act, on moneys collected, of which he shall in no case be deprived, shall in no one year exceed the sum fixed by the act of the eighteenth of May, one thousand eight hundred and forty-two, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year eighteen hundred and forty-two," as the maximum of compensation per annum for such district attorney.

SEC. 8. *And be it further enacted*, That in a case of a proceeding *in rem* on behalf the United States, where a forfeiture or condemnation is decreed, and the proceeds of the sale of the thing forfeited shall be insufficient to pay the costs, the United States shall not pay the deficiency, but in every such case it shall be the duty of the court making the decree to apportion the proceeds of such sale to and among the persons entitled to receive such fees or costs, according to a fair rule, having a [view] to the value of their respective service; and that in all proceedings *in rem* in behalf of the United States, when the parties are not ready for trial, or the claimant shall refuse to bond the property, it shall be the duty of the district judge to order the marshal to sell the same at public auction, and to deposite the proceeds of sale; but if, in the opinion of the district judge, it will be inexpedient to order an immediate sale, he shall direct the marshal to commit the property, with the exception of all sea vessels, to the collector of the district for safe keeping, and it shall be the the duty of the collector to safely keep the same, until ordered by the court to surrender them to the marshal.

The custody of all sea vessels, in proceedings in behalf of the United States, shall be with the marshal, subject to sale by order of the court, as hereinbefore provided in regard to other property. In all proceedings *in rem* in behalf of the United States, where the goods are under seizure by the collector and in his possession, it shall be his duty to safely keep the same until ordered by the court to surrender them to the marshal; and when the

marshal returns that the goods are in the custody of the collector, and while they remain in such custody, he shall stand acquitted of all responsibility for the safe keeping or production to answer the decree. The judges of the several district courts of the United States are hereby invested with authority to adopt such rules as may be necessary to carry the foregoing provisions into effect.

SEC. 9. *And be it further enacted*, That if any district attorney, marshal, or clerk, of any court in the United States, shall neglect or refuse to make such reports or returns as by law he is required to make, such officer shall forfeit his right to receive his fees and emoluments for the current quarter of the year in which such neglect or refusal occurs, unless he shall obtain a certificate from the judge of the court of which he is the officer that his neglect ought to be excused, and transmit the same to the Solicitor of the Treasury, together with the return or report which he had failed to make; and, in any such case of neglect or refusal, it shall be the duty of the Solicitor of the Treasury to give notice thereof to the judge or judges of the proper court, who shall disallow all fees or costs to such officer for such quarter.

SEC. 10. *And be it further enacted*, That the officers aforesaid shall not be entitled to charge or receive costs or fees from the United States, in any case where, by law, the United States are or may be made liable to pay the same, until such case shall have been finally decided, and it has been ascertained that the same cannot be recovered from the defendant, or the party primarily bound to pay the same. And where the costs in any case shall be paid by the United States, and another party is liable to pay the same, it shall be the duty of the officers, who may receive such costs from the United States, to make a report thereof to the clerk of the proper court, who shall thereupon enter the same of record, in the case to which it belongs, and mark on the docket the costs so paid for the use of the United States, and make report thereof to the Solicitor of the Treasury.

SEC. 11. *And be it further enacted*, That at any sale of personal estate, on execution or final process, at the suit of the United States, it shall be lawful for the United States, by such agent as the Solicitor of the Treasury shall appoint, to become the purchaser thereof: *Provided*, That in no case shall such agent bid, on behalf of the United States, a greater amount than that of the debt or demand for which such personal estate may be exposed to sale, together with the costs; and the Solicitor of the Treasury shall have charge of such estate, so purchased, and power to sell the same, and, after deducting from the amount for which he may sell said estate, the costs and charges incident to the agency, custody, and re-sale of the same, to cause the balance to be paid into the Treasury of the United States: *Provided*, That, for such agency, the charge shall in no case exceed ten per centum of the amount received on such re-sale.

SEC. 12. *And be it further enacted*, That in any case where three years shall have elapsed after suit brought, or proceedings instituted, in favor of the United States, to recover any debt or demand, and the amount for which such suit is brought or proceedings instituted has not been recovered, the Solicitor of the Treasury shall have power to appoint a special agent to attend to the same, who shall be paid, out of the sum recovered in such case, such amount as the said Solicitor shall decide to be a reasonable compensation: *Provided, however*, That the compensation shall not exceed ten per centum of the sum recovered by said agent, unless the debt or de-

mand should be of more than ten years standing, in which case the compensation shall not exceed twenty-five per centum of the sum recovered as aforesaid.

SEC. 13. *And be it further enacted*, That each district attorney shall be entitled to receive, upon all moneys collected before judgment, decree, or sentence, and upon judgments, decrees, or sentences, passed since the year one thousand eight hundred and thirty, a commission of five per centum on the first five hundred dollars, and one per centum on whatever sum is collected over one hundred dollars: *Provided, however*, That the said commissions shall not exceed seventy-five dollars in any one case.

For all moneys collected on judgments, decrees, and sentences, rendered or passed since the year 1820 and before 1830, a commission of five per centum on the first five hundred dollars, and three per centum on whatever sum is collected over one hundred dollars.

For all moneys collected on judgments, decrees, and sentences, rendered or passed since the year 1810 and before 1820, a commission of seven per centum.

And for all moneys collected on judgments, decrees, and sentences, rendered or passed before the year 1810, a commission of ten per centum and the percentage aforesaid shall be paid out of the sums collected, to the said attorney, by the marshal or other officer receiving the same for the United States.

And each district attorney of the United States shall, before he assumes to discharge the duties of his office, with competent security, to be approved by one of the judges of the circuit, district, or Territorial courts of the United States, enter into a stipulation or agreement, in writing, to the United States, in the nature of an official bond, the condition or covenant of which shall be for the faithful performance of the duty of his office, and the prompt payment to the United States of all money which may come to his hands; which said stipulation shall be filed in the office of the clerks of the said courts, respectively, and shall be subject to be proceeded upon from time to time, as may be done on marshal's bonds.

SEC. 14. *Be it further enacted*, That it shall be the duty of the clerks of the courts of the United States to allow access, without charge, to the records in their offices, respectively, to the attorneys of the United States, for the purpose of examination into all matters touching the performance of their official duties.

SEC. 15. *Be it further enacted*, That nothing in this act contained shall be construed to repeal or alter the law in relation to the per diem compensation of certain officers for attending the courts of the United States when sitting in bankruptcy, or on rule days, as contained in the second proviso of No. 167, of sec. 1st, of the act of 18th May, 1842.

*Documents referred to in the report of an examination into the judicial expenses of the Government, prepared under resolutions of the House of Representatives of the United States, passed on the 19th day of March, 1842, at the office of the Solicitor of the Treasury, December, 1842.*

## EXHIBIT NO. 1.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

*Costs and expenses in the matter of the United States*

vs.

3 bales, marked A, 615 d 617,
1 case, marked A, 614,
1 bale, marked Z, 30,
1 bale, marked B, 72, and
2 cases, marked ⅂O, 38 and 39,

Monition returnable Nov. term, 1839.
Final decree, March, 1841.

| | |
|---|---|
| Costs of Wm. C. H. Waddell, late marshal | $740 21 |
| Disbursements of Wm. C. H. Waddell, late marshal | 362 68 |
| Costs of Benjamin F. Butler, Esq., late United States attorney | 279 93 |
| Costs of F. P. Betts, former clerk | 44 74 |
| Costs of C. D. Betts, clerk | 100 82 |
| Costs of marshal, on monition returnable April, 1841 | 361 73 |
| Disbursements of marshal, on monition returnable April, 1841 | 167 07 |
| Costs of Ogden Hoffman, Esq., United States attorney | 118 23½ |
| Clerk's costs, since May 25, 1841 | 35 75 |
| | 2,211 16½ |

The proceeds of sale were $5,182 62.

It is proper to bear in mind that the suit was commenced in 1839, and the decree made in 1841. The costs of two clerks, two district attorneys, and two marshals were incurred in the progress of the suit; and that, in some measure, increased the amount. The costs and disbursements, large as was the amount of the property condemned, nearly equalled one-half of the proceeds of sale.

A.

UNITED STATES DISTRICT COURT.

*Jesse Hoyt, Esq., collector of the port of New York, to B. F. Butler, United States attorney for the southern district of New York,* Dr.

To district attorney's costs in the following suits, as per taxed bills, annexed.

| Nos. | Parties. | Amounts. |
|---|---|---|
| 933 934 | The United States *vs.* Nelson J. Elliott, David N. Lord, and Reuben Elliott - - - | $59 89 |
| 936 937 | The same *vs.* the same - - - - | 59 89 |
| 939 940 | The same *vs.* the same - - - - | 59 89 |
| 942 943 | The same *vs.* the same - - - - | 59 89 |
| 945 946 | The same *vs.* the same - - - - | 59 89 |
| 948 949 | The same *vs.* the same - - - - | 59 89 |
| 951 952 | The same *vs.* the same - - - - | 59 89 |
| 954 955 | The same *vs.* the same - - - - | 59 89 |
| 957 958 | The same *vs* the same - - - - | 59 80 |
| 960 961 | The same *vs.* the same - - - - | 59 89 |
| 963 964 | The same *vs.* the same - - - - | 59 89 |
| 966 967 | The same *vs.* the same - - - - | 59 89 |
| 969 970 | The same *vs.* the same - - - - | 59 89 |
| 972 973 | The same *vs.* the same - - - - | 59 89 |
| 975 976 | The same *vs.* the same - - - - | 59 89 |
| 978 979 | The same *vs.* the same - - - - | 59 89 |
| 981 982 | The same *vs.* the same - - - - | 59 89 |
| 984 985 | The same *vs.* the same - - - - | 59 89 |
| 987 988 | The same *vs.* the same - - - - | 59 89 |
| 990 991 | The same *vs.* the same - - - - | 59 89 |
| 993 994 | The same *vs.* the same - - - - | 59 89 |
| 996 997 | The same *vs.* the same - - - - | 59 89 |
| 999 1000 | The same *vs.* the same - - - - | 59 89 |
| 1002 1003 | The same *vs.* the same - - - - | 59 89 |
| 1005 1006 | The same *vs.* the same - - - - | 59 89 |
| 1008 1009 | The same *vs.* the same - - - - | 59 89 |
| 1011 1012 | The same *vs.* the same - - - - | 59 89 |
| 1014 1015 | The same *vs.* the same - - - - | 59 89 |
| 1017 1018 | The same *vs.* the same - - - - | 59 89 |
| 1020 1021 | The same *vs.* the same - - - - | 59 89 |
| 1023 1024 | The same *vs.* the same - - - - | 59 89 |
| 1026 1027 | The same *vs.* the same - - - - | 59 89 |
| 1029 1030 | The same *vs.* the same - - - - | 59 89 |
| 1032 1033 | The same *vs.* the same - - - - | 59 89 |
| 1035 1036 | The same *vs.* the same - - - - | 59 89 |
| 1038 1039 | The same *vs.* the same - - - - | 59 89 |
| 1041 1042 | The same *vs.* the same - - - - | 59 89 |

A—Continued.

| Nos. | Parties. | Amount. |
|---|---|---|
| 1044 1045 | The United States *vs.* Nathan J. Elliott, David N. Lord, and Reuben Elliott - - - | $59 89 |
| 1047 1048 | The same *vs.* the same - - - - | 59 89 |
| 1050 1051 | The same *vs.* the same - - - - | 59 89 |
| | | 2,395 60 |
| 15,784 | The same *vs.* Timothy Kissam, et al. - - | 58 95 |
| 1,626 | The same *vs.* Nicholas D. C. Moller, et al. - | 64 82 |
| 1,632 | The same *vs.* the same - - - - | 64 82 |
| 1,635 | The same *vs.* the same - - - - | 64 82 |
| 1,629 | The same *vs.* the same - - - - | 64 82 |
| 251 | The same *vs.* John C. Loscker, et al. - - | 64 44 |
| 18,440 | The same *vs.* the same, et al. - - - | 67 20 |
| | The same *vs.* Nelson J. Elliott, et al. - - | 1,209 51 |
| | | 4,054 98 |

Received, New York, May 8, 1840, from Jesse Hoyt, Esq., collector, &c., four thousand and fifty-four dollars and ninety-eight cents, being the amount of district attorney's costs, as per taxed bills annexed, for which sum I have signed duplicate receipts.

B. F. BUTLER, *U. S. Attorney.*

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UNITED STATES DISTRICT COURT.

*The United States vs. Nelson J. Elliott, David N. Lord, and Reuben Elliott.*

COSTS ON DISCONTINUANCE.

| No. bonds. | Nature of service. | Amount. |
|---|---|---|
| | *District attorney's fees.* | |
| 933 934 | Returning fee and warrant of attorney - - | $3 75 |
| | Triple receipts for bonds, (2 bonds,) engrossing, &c. | 1 75 |
| | Drawing and engrossing præcipe, $1; report to Solicitor, $1 75 - - - - - | 2 75 |
| | Drawing and engrossing capias - - - | 1 43 |
| | Drawing narrative, (folio 45,) engrossing, and copy - | 16 87½ |
| | Counsel, perusing, &c., $1 25; certificate, &c., 37½ cts. | 1 62½ |
| | Oyer, 2 bonds, (12 folio,) $1 50; 4 copies, $3 - | 4 50 |
| | Drawing judgment roll, 76 cents; enrolling narrative, &c., (48 folio,) $6 - - - - | 6 76 |

A—Continued.

| No. bonds. | Nature of service | | Amount. |
|---|---|---|---|
| 933 934 | Drawing consent to discontinue, (3 folio,) engrossing, and copy | | $1 12½ |
| | Manuscript for discontinuance | | 62½ |
| | Drawing and engrossing rule | | 37½ |
| | Copy, costs, and nov. taxation, $1; attendance, 25 cts. | | 1 25 |
| | Two term fees | | 1 25 |
| | Report to Solicitor and Auditor | | 3 50 |
| | Two copies taxed bill for collector | | 2 00 |
| | | | 49 56½ |
| | *Clerk's fees.* | | |
| | Reading and filing warrant of attorney, 34 cents; sealing capias, 34 cents | $0 68 | |
| | Two processes, 34 cents; two reports, 75 cts. | 1 09 | |
| | Filing consent, 17 cents; entering rule for discontinuance, 25 cents | 42 | |
| | Taxing costs and signing duplicates | 2 01 | |
| | | | 4 20 |
| | *Marshal's fees.* | | |
| | Arresting two defendants, $6, and returning capias, 12½ cents | | 6 12½ |
| | | | 59 89 |

Taxed at fifty-nine dollars and eighty-nine cents.

FRED. J. BETTS, *Clerk.*

May 7, 1840.

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U. STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF N. YORK.

*The United States vs. Nicholas D. C. Moller, William G. G. Oppenhiemer, and Ezra Lewis.*

DISTRICT ATTORNEY'S COSTS, CLERK'S FEES, AND MARSHAL'S FEES.

No. 1626. [Capias returnable, May term, 1840.]

| | | |
|---|---|---|
| | *District attorney's fees.* | |
| | Returning fee and warrant of attorney | $3 75 |
| | Drawing and engrossing capias | 1 43 |
| | Motion for body, 62½ cents; drawing narrative, (7 folio,) $1 33 | 1 95½ |
| | Two copies narrative, 84 cents; two copies oyer, (fol. 4,) 48 cts. | 1 32 |
| | Motion that defendant appear and plead | 62½ |
| | Attorney's brief and fee on special motion | 3 63 |
| | Motion that default be entered | 62½ |

A—Continued.

| | | |
|---|---|---|
| Attorney's brief and fee on special motion - - - | | $3 63 |
| Motion for interlocutory judgment - - - - | | 62½ |
| Attorney's brief and fee on special motion - - - | | 3 63 |
| Motion that clerk assess damages - - - - | | 62½ |
| Attorney's brief and fee on special motion - - - | | 3 63 |
| Motion to confirm clerk's report - - - - | | 62½ |
| Attorney's brief and fee on special motion - - - | | 3 63 |
| Motion for final judgment - - - - - | | 62½ |
| Attorney's brief and fee on special motion - - - | | 3 63 |
| Drawing judgment roll, 76 cents; enrolling narrative thereon, and engrossing, (folio 11,) $1 37½ - - - - | | 2 13½ |
| Drawing up judgment and entering same on the roll - - | | 1 12½ |
| Copy costs and notice of taxation - - - - | | 1 00 |
| Attending on taxation of costs - - - - - | | 25 |
| Execution - - - - - - | | 2 06 |
| Attorney's term fees - - - - - - | | 1 87½ |
| Triple receipts for collector, engrossing, and copy, 87½ cents; report of do., $1 12½ - - - - - | | 2 00 |
| Two præcipes, $1; receipts for fieri facias and copy, $1 25; report, $1 12½ - - - - - | | 3 37½ |
| Duplicate costs for collector - - - - - | | 2 00 |
| | | 49 80 |
| *Clerk's fees.* | | |
| Reading and filing warrant of attorney, in open court - | $0 34 | |
| Sealing, returning, and filing and entering capias - | 34 | |
| Reading and filing narrative and oyer, in open court - | 48 | |
| Entering rule to appear - - - - - | 25 | |
| Entering rule to plead - - - - - | 25 | |
| Entering rule for defendant's default - - - | 25 | |
| Entering rule for interlocutory judgment - - | 25 | |
| Entering rule for assessment of damages - - | 25 | |
| Clerk's fees on assessment - - - - | 1 33 | |
| Entering rule to confirm report - - - | 25 | |
| Reading and filing report of assessment - - | 34 | |
| Entering rule for final judgment - - - | 25 | |
| Entering judgment - - - - - | 17 | |
| Taxing costs and signing roll - - - - | 1 00 | |
| Filing roll and docketing judgment - - - | 50 | |
| Sealing, returning execution, and filing - - | 34 | |
| | | 6 59 |
| Two reports, 75 cents; two præcipes, filing, 34 cents; taxing duplicate costs, $1 34 - - - - - - | | 2 43 |
| *Marshal's fees.* | | |
| Fees due arresting two defendants and returning writ . - | | 6 00 |
| | | 64 82 |

I tax the costs in the above entitled suit (including clerk's fees and marshal's fees) at sixty-four dollars and eighty-two cents.

MAY 7, 1840. FRED. J. BETTS, *Clerk.*

UNITED STATES DISTRICT COURT.

*The United States of America vs. Nelson J. Elliott and Reuben Elliott.*

| | | |
|---|---|---|
| District attorney's costs - - - | $1,141 | 90½ |
| Clerk's fees - - - - - | 61 | 73 |
| Marshal's fees - - - - - | 5 | 88 |
| | 1,209 | 51½ |

*Attorney's fees.*

| | | |
|---|---|---|
| Retaining fee and warrant of attorney - - - | $3 | 75 |
| Drawing and engrossing præcipe, $25; report to Solicitor, $45 | 70 | 00 |
| Drawing and engrossing capias, $1 43; motion for body 62½ c. | 2 | 05 |
| Drawing narrative, (1,332 fol.,) engrossing, and copy - | 499 | 50 |
| Oyer 80 bonds, at 75 cents each, $60; 4 copies, $120 - | 180 | 00 |
| Motion that defendants appear and plead - - - | | 62½ |
| Attorney's fee and brief on motion - - - - | 3 | 63 |
| Motion that default be entered, 62½ cts.; attorney's fee, $3 63 | 4 | 25½ |
| Motion for interlocutory judgment - - - - | | 62½ |
| Attorney's fee and brief on motion - - - - | 3 | 63 |
| Motion that clerk assess damages - - - - | | 62½ |
| Attorney's fee and brief on motion - - - - | 3 | 63 |
| Motion to confirm clerk's report - - - - | | 62½ |
| Attorney's fee and brief on motion - - - - | 3 | 63 |
| Motion for final judgment - - - - - | | 62½ |
| Attorney's fee and brief on motion - - - - | 3 | 63 |
| Drawing judgment roll, 76 cents; enrolling narrative, (1,336 fol.,) $167 - - - - - - - | 167 | 76 |
| Drawing up judgment and entering same on roll - - | 1 | 12½ |
| Copy of costs and notice of taxation - - - - | 1 | 00 |
| Attending taxation - - - - - - | | 25 |
| Execution - - - - - - - | 2 | 06 |
| Drawing præcipe for fieri facias, and engrossing - - | 25 | 00 |
| Receipt for fieri facias, and three copies - - - | 70 | 00 |
| Report of do. to Solicitor and Auditor - - - | 90 | 00 |
| Three term fees - - - - - - | 1 | 87½ |
| Two copies taxed bill for collector - - - - | 2 | 00 |
| | 1,141 | 90½ |

*Clerk's fees.*

| | | |
|---|---|---|
| Reading and filing warrant of attorney, 34 cents; sealing capias, 34 cents - - - - | $0 | 68 |
| Reading and filing narrative and oyers - - | 13 | 94 |
| Entering rule to appear, 25 cents; do. to plead, 25 cts. | | 50 |
| Do. for default, 25 cents; entering judgment, 25 cents; assessment, 25 cents - - - - | | 75 |
| Fees on assessment - - - - - | 1 | 33 |
| Entering rule to confirm report, 25 cts.; filing do. 34 c. | | 59 |
| Do. for judgment, 25 cts.; entering judgment, 17 cts. | | 42 |

FEES—Continued.

| | | |
|---|---|---|
| Taxing costs and signing roll, $1; filing and docketing judgments, 50 cents | $1 50 | |
| Sealing, returning, and filing execution | 34 | |
| One report, $40; two præcipes, 34 cents | 40 34 | |
| Taxing duplicate costs | 1 34 | |
| | | $61 73 |
| *Marshal's fees.* | | |
| Serving writs on two defendants | | 5 63 |
| Returning two writs | | 25 |
| Taxed at twelve hundred and nine dollars and fifty-one cents | | 1,209 51 |

FRED. J. BETTS, *Clerk.*

MAY 7, 1840.

B.

*Bill of costs in Connecticut.*

ATTORNEYS' FEES.

| | |
|---|---|
| For drawing writ, for the first page | $1 00 |
| For each succeeding page | 50 |
| Attorney's fee, on suits of an adversary character | 7 00 |
| Attorney's fee, on default | 3 34 |
| Issuing subpœna, including seal | 1 50 |

MARSHALS' FEES.

| | |
|---|---|
| Service on each defendant named in the process | 2 00 |
| Copies, per page of 280 words | 25 |
| Service of execution | 2 00 |
| Travel, five cents per mile, to serve and return. | |
| Commission, two per cent., on money collected. | |

CLERKS' FEES.

| | |
|---|---|
| Entry of a case | 67 |
| Continuance | 67 |
| Judgment | 67 |
| Record, per page of 280 words | 34 |
| Seal, signature, and test, to any process | 75 |

*Fees on an indictment.*

ATTORNEYS' FEES.

| | |
|---|---|
| Drawing indictment, for the first page | $1 00 |
| For each succeeding page | 50 |
| Managing and arguing a cause not capital | 9 00 |
| On confession or plea of guilty | 5 00 |
| Trial of a capital case | 14 00 |
| Nol. pros. or grand jury's return of "not a true bill" | 3 34 |

MARSHALS' FEES.

| | |
|---|---|
| Service of warrant | 2 00 |
| Travel, per mile | 06¼ |
| Travel, with prisoner in charge, to court, or jail, per mile | 25 |
| Placing prisoner at the bar | 1 00 |
| Service of subpœna, on each witness | 25 |
| Travel, per mile | 25 |

CLERKS' FEES.

| | |
|---|---|
| Entry | 67 |
| Judgment | 67 |
| Record, for each page of 280 words | 34 |
| Warrant, with seal | 1 50 |
| Arraignment of prisoner | 1 34 |
| Continuance | 67 |

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C.

*Jesse Hoyt, Esq., Collector, &c., to Benjamin F. Butler,* Dr.

To taxable costs and counsel fees, in the defence of the following suits against you in the United States circuit court:

| | | |
|---|---|---|
| 1. Jesse Hoyt *ads.* John A. Underwood and others: | | |
| Taxable costs, as per taxed bill annexed | $74 31 | |
| Counsel fee, in same case | 50 00 | |
| | | $124 31 |
| 2. The same *ads.* Rich'd K. Haight and others: | | |
| Taxable costs | 68 60 | |
| Counsel fee, in same case | 50 00 | |
| | | 118 60 |
| 3. The same *ads.* David Hadden and others: | | |
| Taxable costs | 65 06 | |
| Counsel fee, in same case | 25 00 | |
| | | 90 06 |
| 4. The same *ads.* the same: | | |
| Taxable costs | 65 06 | |
| Counsel fee, in same case | 50 00 | |
| | | 115 06 |

ACCOUNT—Continued.

| | | | |
|---|---|---|---|
| 5. | The same *ads.* Samuel F. Dorr and others: | | |
| | Taxable costs - - - - | $71 66 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | $96 66 |
| 6. | The same *ads.* the same: | | |
| | Taxable costs - - - - | 71 66 | |
| | Counsel fee, in same case - - - | 50 00 | |
| | | | 121 66 |
| 7. | The same *ads.* James Hall: | | |
| | Taxable costs - - - - | 87 51 | |
| | Counsel fee, in same case - - - | 50 00 | |
| | | | 137 51 |
| 8. | The same *ads.* Samuel F. Dorr and others: | | |
| | Taxable costs - - - - | 75 40 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 100 40 |
| 9. | The same *ads.* the same: | | |
| | Taxable costs - - - - | 75 40 | |
| | Counsels fee, in same case - - - | 25 00 | |
| | | | 100 40 |
| 10. | The same *ads.* Aaron C. Burr: | | |
| | Taxable costs - - - - | 75 40 | |
| | Counsel fee, in same case - - - | 50 00 | |
| | | | 125 40 |
| 11. | The same *ads.* David C. Porter and others: | | |
| | Taxable costs - - - - | 75 40 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 100 40 |
| 12. | The same *ads.* Henry Moss: | | |
| | Taxable costs - - - - | 71 66 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 96 66 |
| 13. | The same *ads.* Jabez C. Howe and others: | | |
| | Taxable costs - - - - | 71 66 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 96 66 |
| 14. | The same *ads.* William B. Bend: | | |
| | Taxable costs - - - - | 75 40 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 100 40 |
| 15. | The same *ads.* Silas Wood and others: | | |
| | Taxable costs - - - - | 74 40 | |
| | Counsel fee, in same case - - - | 50 00 | |
| | | | 124 40 |
| 16. | The same *ads.* Nathaniel Whiting and others: | | |
| | Taxable costs - - - - | 70 66 | |
| | Counsel fee, in same case - - - | 25 00 | |
| | | | 95 66 |

ACCOUNT—Continued.

| | | |
|---|---|---|
| 17. The same *ads.* Thatcher Tucker and George B. Dorr : | | |
| Taxable costs - - - - | $70 66 | |
| Counsel fee - - - - - | 25 00 | |
| | | $95 66 |
| 18. The same *ads.* the same : | | |
| Taxable costs - - - - | 70 66 | |
| Counsel fee - - - - | 25 00 | |
| | | 95 66 |
| 19. The same *ads.* David Hadden and others : | | |
| Taxable costs - - - - | 70 66 | |
| Counsel fee - - - - | 25 00 | |
| | | 95 66 |
| 20. The same *ads.* Edward Wright and others : | | |
| Taxable costs - - - - | 70 66 | |
| Counsel fee - - - - | 25 00 | |
| | | 95 66 |
| 21. The same *ads.* the same : | | |
| Taxable costs - - - - | 70 66 | |
| Counsel fee - - - - | 25 00 | |
| | | 95 66 |
| 22. The same *ads.* James I. Roosevelt and others : | | |
| Taxable costs - - - - | 84 07 | |
| Counsel fee - - - - | 50 00 | |
| | | 134 07 |
| | | 2,381 65 |
| Counsel fee in the suit of George Robson, against you, to recover duties paid on cotton lace capes - - - - - | – | 50 00 |
| Counsel fee in the suit of William Chauncey and Isaac D. Aiken, against you - - | – | 50 00 |
| | | 2,481 61 |

CUSTOM-HOUSE, NEW YORK, *June* 8, 1840.

Received from Jesse Hoyt, Esq., collector, twenty-four hundred and eighty-one dollars and sixty-one cents, for which I have signed duplicate receipts.

B. F. BUTLER,
By F. F. MARBURY.

UNITED STATES CIRCUIT COURT.

No. 1.

JESSE HOYT *ads.* JOHN A. UNDERWOOD, FREDERICK FETEREL, and JOSEPH BLAIR.

| | |
|---|---|
| Costs as taxed in superior courts - - - - | $17 06 |
| Retaining fee, warrant of attorney, and filing - - | 4 17 |
| Drawing petition, (fol. 8,) $2; 2 copies, $2 - - - | 4 00 |
| Copy to file, $1, affidavit to annex; engrossing and copying, and oath, $1 62½ - - - - - - - | 2 62 |
| Certificates and copies - - - - - | 62 |
| Counsel perusing - - - - - - | 1 25 |
| Clerk filing petition and papers annexed - - - | 51 |
| Motion and rule for certiorari - - - - | 87 |
| Clerk entering rule - - - - - - | 25 |
| Drawing certiorari, (4 fol.,) and engrossing - - - | 1 50 |
| Two copies, $1; clerk sealing, 68 cents - - - | 1 68 |
| Fees of clerk of superior court, return to certiorari - - | 1 54 |
| Clerk entering cause - - - - - - | 25 |
| Filing and entering certiorari and return - - - | 25 |
| Attorney's examination de be. of Samuel T. Jones - - | 50 |
| Drawing subpœna and engrossing - - - - | 1 46 |
| Drawing ticket, 75 cents; engrossing, 37½ cents; seal, 34 cents; 11 copies, at 18 cents - - - - - | 3 44 |
| Eleven affidavits of attendance of witnesses, at 5*s.* - - | 6 87 |
| Eleven certificates of do. of jud., at 3*s.* - - | 4 12 |
| Attorney's counsel fee and brief on trial - - - | 6 37 |
| Costs, No. of taxation, and attendance - - - | 1 87 |
| Three term fees - - - - - - | 1 87 |
| Taxed costs and signing duplicates - - - - | 2 01 |
| Two copies taxed bill for collector - - - - | 2 00 |
| Drawing report of collector, engrossing and copying, (fol. 5) - | 2 50 |
| Marshal's fees serving certiorari and return - - - | 4 12 |
| Clerk's fee on trial - - - - - - | 56 |
| | 74 31 |

Taxed at $74 31.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 2.

JESSE HOYT *ads.* RICHARD K. HAIGHT, DAVID H. HAIGHT, JOHN HALSEY, Jr., and NICHOLAS K. ANTHONY.

| | |
|---|---|
| Costs in superior court, as taxed | $17 06 |
| Retaining fee, warrant of attorney, and filing | 4 17 |
| Drawing petition, (fol. 8,) $2; 2 copies, $2 | 4 00 |
| Copy to file, $1; affidavit to annex three copies and oath, $1 62 | 2 62 |
| Certificate and copies | 62 |
| Counsel perusing | 1 25 |
| Clerk filing petition and paper annexed | 51 |
| Motion and rule for certiorari | 87 |
| Clerk entering rule | 25 |
| Drawing certiorari, (4 fol.,) and engrossing | 1 50 |
| Two copies, $1; clerk sealing, 62½ cents | 1 63 |
| Fees, clerk of superior court, return to certiorari | 1 21 |
| Clerk entering cause | 25 |
| Filing and entering certiorari and return | 25 |
| Drawing subpœna and engrossing | 1 46 |
| Drawing ticket, 75 cents; engrossing, 37½ cents; seal, 34 cents; 7 copies, $1 26 | 2 72 |
| Seven affidavits of attendance of witnesses, at 5*s.* | 4 37½ |
| Seven certificates endorsed, at 3*s.* | 2 62½ |
| Attorney's counsel fee and brief on trial | 6 37½ |
| Copy, costs, and No. of taxation | 1 87½ |
| Clerk's fee on trial | 40 |
| Three terms fee | 1 87½ |
| Taxing costs and signing duplicates | 2 01 |
| Two copies taxed bill for collector | 2 00 |
| Drawing and engrossing report to collector, (5 fol.,) and copies | 2 50 |
| Marshal's fee, serving certiorari and return | 4 12½ |
| | 68 60 |

Taxed at $68 60.

FRED. J. BETTS.

JUNE 4, 1840.

No. 3.

THE SAME *ads.* DAVID HADDEN *et al.*

| | | |
|---|---|---|
| The like services and costs as in preceding case *vs.* Underwood *et al.* in superior court (No. 1) | | $17 06½ |
| The like services and costs as in case *vs.* P. K. Haight *et al* (No. 2) ante in circuit court | $51 54 | |
| The less charge for three witnesses | 3 54 | |
| | | 48 00 |
| | | 65 06½ |

No. 4.

THE SAME *ads.* THE SAME.

| | |
|---|---|
| The like services and costs as in last case - - - | $65 06 |

I tax each of the two preceding bills of costs at $65 06.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 5.

THE SAME *ads.* SAMUEL F. DORR *et al.*

| | | |
|---|---|---|
| The like services and costs as in case of R. H. & Co., (No. 2,) ante in superior court - - - - | | $17 06 |
| The like services as in same case in circuit court - | $51 54 | |
| Add subpœna, engrossing, and seal - - - | 1 43 | |
| Ticket, 25 cents; affidavit of attendance, 62½ cents; certificate, 25 cents - - - - - | 1 12½ | |
| Opposing taxation of costs - - - - | 50 | |
| | | 54 59½ |
| | | 71 66 |

No. 6.

THE SAME *ads.* THE SAME.

| | |
|---|---|
| Like services and costs as in No. 5, ante in both courts - | $71 66 |

I tax each of the two foregoing bills of costs at $71 66.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 7.

THE SAME *ads.* JAMES HALL.

| | |
|---|---|
| Costs as taxed in superior court - - - - - | $21 57 |
| Retaining fee and warrant of attorney - - - | 4 17 |
| Drawing petition, (fol. 8,) $2; engrossing and copies, $2 - | 4 00 |
| Copy to file, $1; affidavit to annex copies and oath, $1 62½ - | 2 62 |
| Certificates and copies, 62½ cents; counsel perusing, $1 25 - | 1 87½ |
| Clerk filing petition and papers annexed - - - | 51 |
| Motion and rule for certiorari, 87½ cents; clerk entering, 25 cents | 1 12 |
| Drawing certiorari, (fol. 4,) and engrossing, 50 cents - - | 1 50 |
| Two copies, $1; clerk sealing, 68½ cents - - - | 1 68 |
| Fees of clerk of superior court, return to certify - - | 1 21 |
| Clerk entering cause - - - - - - | 25 |
| Filing and entering certiorari and return - - - | 25 |
| Drawing subpœna and engrossing - - - - | 1 46 |
| Drawing ticket, 75 cents; engrossing, 37½ cents; sealing writ, 34 cents; 18 copies, $3 24 - - - - - | 4 70½ |

ACCOUNT—Continued.

| | |
|---|---|
| 18 affidavits of attendance of witnesses, at 5 shillings - - | $11 25 |
| 18 certificates endorsed, at 3 shillings - - - - | 6 75 |
| Attorney's counsel fee and brief on trial - - - | 6 37½ |
| Copying, costs, and No. of taxation - - - - | 1 87½ |
| Clerk's fee on trial - - - - - - | 1 82 |
| Three term fees - - - - - - | 1 87½ |
| Taxing costs and signing duplicates - - - - | 2 01 |
| Two copies taxed bill for collector - - - - | 2 00 |
| Drawing, engrossing, and copying report to collector, (5 fol.) - | 2 50 |
| Marshal's fees, serving certiorari and returning - - | 4 12½ |
| | 87 51 |

Taxed at $87 50.

FRED. J. BETTS, *Clerk.*

No. 8.

THE SAME *ads.* SAMUEL F. DORR *et al.*

| | |
|---|---|
| Like costs in superior court as in court case, less taxation and attachment - - - - - - - - | $20 81 |
| Like costs in circuit court as in No. 5, ante ads. same - - | 54 59 |
| | 75 40 |

No. 9.

THE SAME *ads.* THE SAME.

| | |
|---|---|
| The like services and costs as in No. 8 ante - - - | $75 40 |

No. 10.

THE SAME *ads.* AARON C. BURR.

| | |
|---|---|
| The like services and cost as in preceding case - - - | $75 40 |

I tax each of the three preceding bills of costs at $75 40.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 11.

THE SAME *ads.* DAVID C. PORTER *et al.*

| | |
|---|---|
| The like services and costs as in case of S. F. Dorr *et al.*, No. 8 ante - - - - - - - - - | $75 40 |

Taxed at $75 40.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 12.

THE SAME *ads.* HENRY MOSS.

| | |
|---|---|
| The like services and costs as in Dorr's case - - - | $71 66 |

No. 5 *ante* No. 13.

THE SAME *ads.* JABEZ C. HOWE *et al.*

| | |
|---|---|
| The like services and cost as in last case - - - | $71 66 |

I tax the two foregoing bills of costs at $71 66 each.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 14.

THE SAME *ads.* WM. B. BEND.

| | | |
|---|---|---|
| The same services and costs in superior court as in No. 8 ante - - - - - - - | $20 81 | |
| The like costs in circuit court as in same case - - | 54 59 | |
| | | $75 40 |

I tax the foregoing bill of costs at $75 40.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 15.

THE SAME *ads.* SILAS WOOD, ROBERT JOHNSTON, and FRANCIS BURRITT.

| | | |
|---|---|---|
| The like costs and services in superior court as in case next preceding - - - - - - - - | | $20 81 |
| The like costs and services in circuit court as in same case - - - - - - - | $54 59 | |
| Less report - - - - - - | 1 00 | |
| | | 53 59 |
| | | 74 40 |

I tax the foregoing bill of costs at $74 40.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 16.

THE SAME *ads.* NATHANIEL WHITING *and others.*

| | | |
|---|---|---|
| The like services and costs as in preceding case (No. 13) of Jabez C. Howe et al. - - - - - | $71 66 | |
| Less report, (20 folio) - - - - - | 1 00 | |
| | | $70 66 |

No. 17.

THE SAME *ads.* THATCHER TUCKER and GEORGE B. DORR.

The like services and costs as in last case - - - $70 66

No. 18.

THE SAME *ads.* THE SAME.

The like services and costs as in last case - - - $70 66

No. 19.

THE SAME *ads.* DAVID HADDEN *and others.*

The like services and costs as in last case - - - $70 66

No. 20.

THE SAME *ads.* EDWARD WRIGHT, WM. STURGIS, JR., and WM. SHAW.

The like services and costs as in preceding case - - $70 66

No. 21.

THE SAME *ads.* THE SAME.

The like services and costs as in preceding case - - $70 66

I tax each of the six next preceding bills of costs at $70 66.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

No. 22.

THE SAME *ads.* JAMES I. ROOSEVELT and CORNELIUS V. S. ROOSEVELT.

The like services and costs as in case of James Hall, (No 7,) ante - - - - - - - $87 51

Less charge for three witnesses - - - - 3 54

$84 07

I tax the foregoing bill of costs at $84 07.

FRED. J. BETTS, *Clerk.*

JUNE 4, 1840.

D.

*Account of sales of sixty jugs of gin, condemned as forfeited to the United States for a violation of the revenue laws.*

| | | |
|---|---|---|
| John K. Collins, one dozen, at | | $5 00 |
| R. L. Crawford, one dozen, at | | 5 00 |
| Harris Tinker, one dozen, at | | 5 00 |
| William Jones, jr., one dozen, at | | 5 00 |
| J. Pickens, one dozen, at | | 5 00 |
| Amount of cost taxed on order of sale | | 25 00 |
| Amount of clerk, taxed | $16 75 | |
| Amount of marshal, taxed | 23 00 | |
| Amount of attorney, taxed | 17 00 | |
| Amount paid for advertising order of sale | 6 00 | |
| Amount paid for serving and returning order of sale | 3 00 | |
| Amount paid for commission | 1 25 | |
| | | 67 00 |
| Amount due officers of court | | 42 00 |

E. E.

ROBERT L. CRAWFORD, *Late Marshal.*

E.

*Account of sales of twelve casks of porter, condemned as forfeited to the United States for a violation of the revenue laws.*

| | | |
|---|---|---|
| David Files, 3 casks, (12 dozen,) at 25*s.* | | $37 50 |
| Taylor & Heyer, 2 casks, (7 dozen,) at 19*s.* | | 16 63 |
| Taylor & Heyer, 1 cask, (3½ dozen,) at 18*s.* | | 7 88 |
| David Files, 1 cask, (3½ dozen,) at 20*s.* | | 8 75 |
| Mr. Griffin, 1 cask, (3½ dozen,) at 19*s.* | | 8 31 |
| Mr. Dawson, 2 casks, (7 dozen,) at 20*s.* | | 17 50 |
| B. Gayle, 2 casks, (7 dozen,) at 20*s.* | | 17 50 |
| Amount of cost taxed on order of sale | | 114 07 |
| Amount of clerk's fees taxed on order of sale | $46 00 | |
| Amount of marshal's fees, do. do. | 23 00 | |
| Amount of attorney's fees, do. do. | 17 00 | |
| Amount of advertising order of sale | 6 00 | |
| Amount of commission on $114 | 5 35 | |
| Amount for serving and returning order of sale | 3 00 | |
| | | 100 35 |
| Balance due | | 13 72 |

ROBERT L. CRAWFORD, *Late Marshal.*

*Statement of payments to counsel for assisting district attorneys in suits wherein the United States were interested, since the 4th of March, 1829.*

| Years. | Attorneys' names and districts. | Cases. | Names of assistant counsel. | Payments. |
|---|---|---|---|---|
| 1829 | Thomas Swann, District of Columbia | United States *vs.* Watkins | F. S. Key | $1,500 00 |
| 1829 | James G. Ringgold, East Florida | Land claims, per act of May 23, 1828 | Joseph M. White | 1,500 00 |
| 1829 | Do do | Do do | Richard K. Call | 500 00 |
| 1830 | Do do | Do do | Do | 1,000 00 |
| 1831 | Do do | Do do | Do | 665 00 |
| 1832 | Do do | Do do | Do | 4,250 00 |
| 1833 | Do do | Do do | Do | 3,125 00 |
| 1831 | F. S. Key, District of Columbia | United States *vs.* Joseph L. Kuhn | B. F. Butler | 200 00 |
| 1834 | Do do | Do do | James Dunlop | 50 00 |
| 1834 | N. S. Benton, northern district of New York | United States *vs.* Champlain | Samuel Beardsley | 100 00 |
| 1835 | John M. McCalla, district of Kentucky | United States *vs.* Triplet and Bailey | P. S. Loughborough | 500 00 |
| 1835 | Thomas Douglas, eastern district of Florida | Land claims, per act of May 23, 1828 | Richard K. Call | 625 00 |
| 1838 | Do do | Do do | Do | 3,509 62 |
| 1838 | Do do | Do do | Charles Downing | 892 23 |
| 1838 | Do do | Do do | Samuel L. Burritt | 743 06 |
| 1839 | Do do | Do do | Do | 3,125 00 |
| 1839 | John P. Anderson, western district of Pennsylvania | United States *vs.* David Bailey | Charles Shaler | 300 00 |
| 1839 | Thomas Slidell, district of Louisiana | United States *vs.* city of New Orleans | Richard Hunt | 500 00 |
| 1839 | Do do | United States *vs.* E. P. Gaines | W. W. King | 150 00 |
| 1840 | Thomas Douglas, eastern district of Florida | United States *vs.* J. G. Cox | James W. Wistatt | 250 00 |
| 1840 | Montgomery Blair, district of Missouri | United States *vs.* sundry individuals | A. L. Maginnis | 300 00 |
| 1840 | John P. Anderson, western district of Pennsylvania | United States *vs.* Nelson and others | H. G. Morehead | 200 00 |
| 1840 | Thomas Douglas, eastern district of Florida | Private land claims, per act of May, 1838 | Samuel L. Barrett | 2,500 00 |
| 1841 | Do do | Do | Do | 2,500 00 |
| | | | | 28,984 91 |

T. L. SMITH, *Register.*

TREASURY DEPARTMENT, REGISTER'S OFFICE, *June* 22, 1842.

G.

UNITED STATES ATTORNEY'S OFFICE,
*New York, November* 21, 1842.

SIR: I have the honor to acknowledge your letter of the 11th May last, with a copy of the preamble and resolutions, passed by the House of Representatives on the 19th of March last, "directing the Secretary of the Treasury, with the agency and assistance of the proper functionary of the Treasury, to examine into the judicial expenses of the Government," &c., and requesting me "to reply to such of the interrogatories, contained in your letter, as I may be able to answer."

First. In answer to the first, I refer you to papers hereto annexed, marked A, B, and C, by which you will perceive that the rule in the State court has been adopted where the fees for corresponding services are regulated, and that where there is no State law on the subject, the antecedent or United States rule has been followed, which mode of charging has been adopted under the opinion and allowance of Judges Thompson and Betts.

The proceedings in the United States courts being so different, in many respects, from the State practice, a reference to it furnishes an imperfect rule. I am not aware of the existence of any charge for petitions, services, or for services not performed.

Second. I know of none.

Third. In answer, I refer you to papers, marked D, E, and F, hereto annexed.

Fourth. The number of suits in favor of the United States, which have been discontinued during the past year, ending 17th of March, 1842, is twenty, and the amount of costs received by the district attorney in such cases, is $763 12.

Fifth. In answer, I can only state, that the attorney's cost, both in the district courts and circuit court, must vary at different times, according to the number of cases which may at such term be noticed or tried. In no case can they, I presume, be great items in the expenditure; and what the great items of expenditure at any one term of the circuit or district court may be, it is not in my power to state. The marshal, being the disbursing officer, can alone answer this interrogatory.

Sixth. There are none.

Seventh. I am not aware of any.

Eighth. I know of none.

Ninth. The marshal alone can answer this interrogatory.

Tenth. To this interrogatory I answer the same as to the last.

Eleventh. Costs are paid by the United States in cases where the verdict is for the defendants, or where, owing to the insolvency of the adverse parties, they cannot be collected from them; such being the law and the practice in the State courts in this State, the plaintiff being always liable for the costs to his own attorney in all cases where there is either a verdict for the defendant or where they cannot be collected from him, &c.

Costs have been paid to the district attorney, by the United States, in four or five *criminal* cases only, as the action progressed; but the practice has been discontinued. They are now paid only at the termination of the case.

I have no knowledge nor any means of ascertaining what amount, under any circumstances, before or after the termination of the suit, has been received for the last three years. My knowledge only extends to the time when

I entered on the duties of my office, viz: March 17, 1841. The whole receipts of this office for the last year, of every kind, were $11,081 30; out of which all disbursements for clerk hire and office expenses were paid, as will appear by my report on file in the office of the Secretary of the Treasury, to which I pray to refer you.

Twelfth. Whenever costs are paid by the United States, which are subsequently collected from the defendants, they are repaid to the United States.

Thirteenth. The amount paid within the last year to the district attorney by defendants, in cases where the United States are plaintiffs, has been $1,221 73; but in a number of cases, where costs have been paid to the district attorney by the collector and marshal, the amount has been subsequently received from the defendants by virtue of the execution issued in the cause to the marshal, and by him accounted for to the Government. I cannot state how much the costs have varied in the last three years, for the reasons stated in my answer to the 11th interrogatory; but the number of suits commenced, carried on, ended, and in progress, during the last year, has been equal to, if not greater than any year during the last three, but, owing to the law of 3d March, 1841, the costs received by the district attorney, have not, I believe, amounted to one-third of the sum received by my predecessor during any of the three previous years. Owing to the stagnation of commerce and the recent tariff, the costs will be much less this year than the last.

Fourteenth. When the United States are concerned, costs are taxed by the clerk of the court, upon a notice of four days, served on the attorney for the defendant, as provided by rule of court. In criminal cases, costs are taxed by the judge, without notice.

Fifteenth. In suits on custom-house bonds, and for violation of and arising under the revenue laws, the costs are paid by the collector. Costs in criminal prosecutions, costs arising from suits instituted for violations of post office laws, and for penalties not relating to the revenue, are paid by the marshal. The former, when taxed by the clerk and examined and allowed by the judge, are presented to the collector, and by him forwarded to the Treasury Department, and there examined by the Auditor and Comptroller, and, if allowed by those officers, returned to the collector, with instructions to pay them. The costs payable by the marshal, when taxed, examined, and allowed by the judge, are presented to this office, and by him paid, on presentation. These costs, when thus paid by the marshal, are included in his accounts, and either allowed or disallowed by the Treasury Department.

Sixteenth. I know of none.

Seventeenth. In answer to this interrogatory, I refer you to the pamphlet and papers hereto annexed, (marked G, H, and I.)

Eighteenth. In answer to the two interrogatories embraced in the resolutions of the House, and to which you ask a reply, I have to state that, as the country increases in extent, business, and population, there must necessarily be a corresponding increase in judicial expenditures; and, in addition to these natural causes, the bankrupt law, which has imposed new duties and labors upon the officers connected with the courts of the United States, has, at the same time, added to the demands on the national Treasury. The effect of this last act will, however, I presume, be temporary, and will be more than made up, as far as the judicial expenses of the district are concerned, by the operation of the tariff act of the last session. Under

its provisions, requiring cash duties, there will be but few suits upon custom-house bonds; and the system of specific duties will materially reduce the number of seizures for frauds upon the revenue.

It may well be doubted, from these causes, whether the receipts of the district attorney, for the next year, unless there should be a large increase in the criminal business of the court, will reach even the maximum provided for in the civil and diplomatic appropriation bill of the last year; but whether such receipts shall be less or more than that maximum, and whether I shall continue to hold the office of district attorney or not, my opposition, upon conviction, to the principles involved in the law, which requires "officers to pay into the Treasury of the United States all their fees and receipts beyond a certain maximum of allowance," is so great, that I avail myself of this report to submit to you, as I have unofficially heretofore done to others, the reasons of such opposition.

First. The law is wrong in principle, because it makes the Government a partner with the attorney—a partner, too, only in the profits, and not in the loss, for all above the maximum the Government is to receive; but if, on the other hand, the receipts do not come up to the maximum, the Government does not make up the deficiency. It does not secure to the attorney the $6,000 as a salary. If he makes more, the Government takes the excess; but if he makes less, the loss is his.

Second. The very passage of the law supposes that there may be an overplus, or else the law was unnecessary. If there be an overplus to be paid into the Treasury of the United States, such overplus is, by so much, a partial taxation upon the suitors for the benefit of the United States. If, in this district, $500 should be paid into the Treasury, as so much beyond the maximum, *that* $500 must have been collected from suitors for the Treasury of the United States—an unjust and partial taxation. A law ought to be for the relief of suitors, not for the benefit and gain of Government.

Third. It is unequal in its operation; it gives the same maximum allowance to the attorney of one district, who may be employed only half his time, that it does to the attorney of another district, whose whole time may be occupied by the duties of his office.

The attorney whose business and fees only reach the maximum receives as much as the one whose labors and duties have earned three times that amount. Besides, an attorney in one district may earn his maximum by the occupation of half his time. The other may be occupied with private professional business, by which he may receive, in addition, more than will be twice as much as his maximum allowance, whilst an attorney in another district may be so fully occupied with the public business as not to have a moment to devote to private professional employment; and yet the latter must be contented with the maximum fixed by law.

Fourth. It takes away a stimulant to exertion, and is a temptation, after the maximum has been earned, to avoid labor and responsibility.

The rule should be, the more he works—the more labor imposed upon him—the greater should be his compensation.

The early remedy to afford just compensation on the one hand, and to guard against enormous profits on the other, is to do away with the maximum, and in its place to request the judges of the Supreme Court to execute the duty imposed by the 7th section of the act of Congress, approved August 23, 1842, entitled "An act further supplementary to an act entitled

'An act to establish the judicial courts of the United States,' passed the twenty-fourth day of September, seventeen hundred and eighty-nine."

Let them prepare a just tariff of fees, to apply equally in every part of the Union, to all attorneys, marshals, and clerks; let it be made on the principle of a fair compensation for each item of service performed, without reference to the laws of each particular State. Under such a tariff, he who has the most work will receive, as he ought, the most compensation; and he who receives the less compensation will find his consolation in the time that he will have unemployed to devote to his private professional gains.

All which is respectfully submitted.

O. HOFFMAN,
*United States Attorney.*

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H.

PHILADELPHIA, *August* 17, 1842.

*Office of Attorney of the United States, Eastern District.*

SIR: To your letter of the 11th instant, inviting my attention to a circular from your office of the 11th May ultimo, accompanied by certain interrogatories relating to judicial expenses, and received by my predecessor in office, I have the honor now to reply.

The several interrogatories chiefly point to the offices of the clerk and marshal, and the information pertains to them. I therefore refer to the answers given by those officers, and make the copies thereof (having been submitted to my consideration) my answers—supplying such deficiencies as fall within my official range.

This will be limited by the first interrogatory, and to the first and second proposed by the House of Representatives. They are as follows, viz:

1st interrogatory. What fees are allowed to the district attorney, marshal, and clerk, of the district and circuit courts, respectively, in your district, in cases wherein the United States are plaintiffs, which are settled before judgment; and what, where such cases are proceeded in to judgment; and what, when execution issues and satisfaction is obtained by execution? State the items, distinguishing between charges for services actually performed and such as are fictitious, or for services supposed to be performed, although in fact not so.

Interrogatory 1st, proposed by the House of Representatives. "What amendments, if any, are required in the law of costs, either as to the amount of fees and costs charged, the manner of allowance or taxation, under what circumstances the same should be paid by the Government, or any other particulars whatever."

Interrogatory 2. "Whether any, and, if any, what provisions should be made by law to regulate the nature, allowance, and payment of the contingent expenses of the courts, or the contingent expenses which should be paid out of such judiciary fund, (and especially that provision be made to abolish all per diem allowance to the officers;) and whether any alteration can be advantageously made in the length of time occupied in the actual sessions of the court, and the unnecessary attendance from day to day of jurors and witnesses."

The act of the 3d of March, 1841, provides that, "in lieu of all fees, emolu-

ments, and receipts allowed in districts, when the present entire compensation exceeds the sum of $1,500 per annum, it shall and may be lawful for the United States attorneys, counsel, clerks, and marshal to demand and receive the same fees that are now or may *hereafter* be allowed by the laws of the States, respectively, where said courts are held, to the attorneys, counsel, clerks, and sheriff, in the highest courts of the State in which like services are rendered.

This law, in my estimation, is very objectionable:

1. Because it makes the compensation of the officers of the United States depend upon the legislation of the respective States.

2. Because it operates very unequally in the several districts of the United States, giving, as in the State of New York, where the fee bill is intended to afford a sufficient remuneration for professional services in each cause, an adequate compensation, and allowing, as in Pennsylvania, where the only fee taxed for an attorney is three dollars, ($3,) and therefore never enters into the estimate of reward for professional services—a paltry consideration for vast labor, professional skill, and responsibility. It does not pay clerk hire for the mere named labor. If the three dollars were stricken out of the Pennsylvania fee bill, which no professional gentleman in the States would reject, then all compensation to an attorney of the United States for services would be at an end.

Whether the entire compensation to the attorney of the United States for this district will exceed $1,500 under the reduction proposed by the said act of 1841, and the act of 1833, which abolishes the credits heretofore allowed for duties, is exceedingly doubtful. The act of 1841 also authorizes the payment of a salary of $200 per annum to the district attorney of the United States, except the southern district of New York, and also the retention by the district attorneys, marshal, and clerks, out of the fees and emoluments, &c., such necessary office expenses, &c., as shall be allowed by the Secretary of the Treasury, not to exceed in New York $3,000 per annum, and in other districts $1,000 per annum, &c. In this district there will be no opportunity for *retention of excess.*

The same law provides that where said *officers shall perform duties for which no compensation is given by the State laws, the said officers may receive such fees as are now allowed by law, according to the existing usage and practice of* the said courts of the United States.

The act of 28th of February, 1799, contains this allowance to district attorneys:

"For all other services in any one cause, $6."

By a reasonable construction of the act of 1841, I think that this $6 ought to be added to the $3, making, in all, $9 for the attorney of the United States in each cause in this district. On this point I shall be obliged to you for your advice and instruction.

As to the other point, the allowance of the salary, and the $1,000 for office expenses, I shall be obliged also for your advice and instruction.

Without these allowances, you must know, from your familiarity with the duties and responsibility of the office here, that the attorney of the United States will not be adequately rewarded.

The amendment I would therefore recommend would be, to abolish all allowances of fees and per diem compensation to attorneys of the United States, and probably to the clerks and marshals, and provide an annual salary to each adequate to the probable business of the district and

other circumstances. By so doing, I believe the Government would save thousands of dollars, and ensure greater fidelity on the part of the officers to their duty.

As it now is, I am sure that the most valuable and important duties I now perform are those for which no remuneration is provided or anticipated. It may not be so with others. Persons do not naturally engage in business from which they expect no recompense.

I have the honor to be, sir, your humble servant,

H. M. WATTS,
*Attorney United States, Eastern District.*

CHARLES B. PENROSE, Esq.,
*Solicitor of the Treasury.*

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K.

OFFICE OF THE CLERK OF THE U. S. DISTRICT COURT,
*Western District of Louisiana, May* 30, 1842.

SIR: In accordance with your circular of the 11th instant, just received at this office, I proceed to answer the interrogatories therein propounded.

1st. Nothing like "fictitious" services are known in this court. The following are the items in a bill of costs where the debt is settled before judgment. You will perceive that the costs incident to the final action of the court upon the case are anticipated; and also that the charges depend upon the length of the petition, &c.

| | | |
|---|---|---|
| For filing petition, and two documents, at 33⅓ cents | | $1 00 |
| For 2 copies of petition, with seal and certificate, (500 words) | | 7 00 |
| For 2 copies of bond, with seal and certificate, (400 words) | | 6 66⅔ |
| For 2 copies of account, with seal and certificate, (400 words) | | 6 66⅔ |
| For 2 citations and copies, with seal and certificate | | 6 66⅔ |
| For filing marshal's returns | | 66⅔ |
| For docketing cause | | 1 33⅓ |
| For entering judgment (of dismissal) | Cost not accrued, but paid by defendant | 2 66⅔ |
| For taxing costs | | 2 66⅔ |
| For entering satisfaction | | 66⅔ |

2d. I know of no other fees where there is no defence set up. In such case, there may be subpœnas, commissions to take testimony, &c.

3d. No such case has ever arisen in this court.

4th. None whatever; there has been no court.

5th. I refer to the marshal.

6th. I know of nothing like "constructive" fees or services. I have never claimed but for services actually rendered.

7th. The only instance has been where I have furnished, on the requisition of your predecessor, "a duly authenticated copy" of a record. In that instance, Judge Lawrence allowed me the usual fee. I may state, under this head, that office rent at the rate of $180 per annum is allowed me. In New Orleans, where the clerk's office would otherwise cost him from $500 to $1,000 per annum, a building is furnished by the United States. For want of a suitable place, I have sometimes been obliged to keep my office at my dwelling. Judge Lawrence and Judge McCaleb have, therefore, allowed me the same as is allowed by law to the clerk of the supreme court of Louisiana.

8th. This is never done.

9th. I refer to the marshal.

10th. Jurors are allowed $1 25 per day, and 5 cents per mile going and returning. They have never, since I have been clerk, (four years,) been allowed for a greater number of days than they have attended. At the March term, (last,) an accident to the steamboat in which the judge had taken his passage from New Orleans prevented his arrival in time, and the court failed. In this case the jurors, some of whom remained two days, claimed their attendance and mileage.

11th. When judgment is rendered against them; but the defendants' costs are paid by defendants. As our court sits but once a year, the judges have thought proper to allow my fee bills annually, although by the practice of this State the clerks' fees are paid semi-annually. An account is kept of all moneys received; and when the execution issues, I put upon the back of it the amount paid by the United States. This the marshal retains to the credit of Government—see "Instructions," page 8.

12th. I refer to the marshal.

13th. None whatever to the clerk, (except in one instance, $30,) since I have been clerk. I have never received $50 from defendants. We have never had a judge before the present who would hold regular sessions of the court. The tribunal, which would otherwise become of great importance, has been brought into contempt. The docket is covered with simple cases (some dating as far back as 1831) which the present judge is determined to wipe out. To that end, he has ordered a special court in August next. The reputation of the court is reviving, and the greatest confidence is reposed in the present judge. I hardly know how to convey to you an idea of the state of affairs in this district for some years past. The revenue laws have been a dead letter, and slaves, by hundreds, have been imported into this district from the British West Indies via Texas; and, if report say true, from Africa itself. Without the most peremptory instructions to the attorney and marshal, the laws regarding the importation of slaves will continue to be a nullity.

I trust you will excuse the freedom of my remarks, which your circular has emboldened me to make. I will only add, that, *with* such instructions, the importance of this court cannot be estimated.

14th. The clerk's bills are made out by him, and examined and approved by the judge.

15th. They are paid by the marshal, on my delivering to him a duplicate fee bill, "examined and approved by the judge."

16th. Fuel, lights, stationery, office rent, amounting, if charged, (I have always declined any charge for fuel or lights,) to about $300 per annum, for *my* office.

17th. The proceedings in this court have been much varied. The fee bill which it is in my power to furnish would, from my limited experience, be imperfect. I refer you, therefore, to the reply of the clerk of the eastern district, where the fees are the same. I will only remark, that the fee bill is graduated by the fee bill of the State courts.

In reply to the general invitation extended by your 18th interrogatory, I may draw upon your patience.

The office of clerk of the United States court is one of high responsibility. It is necessarily filled by individuals educated to the profession of law, and they are the guardians of public records of incalculable value. In

some places the office is lucrative; in others, far from it. In this district the emoluments of office, during my clerkship, have never exceeded $350 per annum. Still the public interests require that the clerk should be always at his post; and he incurs the same responsibility, and subjects himself to the same confinement, as a clerk whose income is $2,000 per annum. You are better informed than myself; but I respectfully submit, that it might conduce to economy to give the clerks a salary of $1,000 or $1,500 in full compensation for all services rendered the United States—a salary proportioned to the responsibility of the office and the dignity of the court. This salary might be proportioned to the expense of living at the North and South; and it should not be forgotten, that if in some offices the services rendered Government are greater than in others, so too are the emoluments of office from other sources.

But another view may be taken of the subject: Congress has thought proper to make it the duty of clerks to pay all over a certain amount into the Treasury. In limiting the incomes of office, Government never aimed to enrich itself at the expense of suitors in its courts. The object of the law was to guard against exorbitant profits in office. Why not, then, distribute the surplus in such a manner as to ensure each office a competent support? If you establish a *maximum*, why not a minimum? If you guard against excessive incomes, why not protect your servants against diminutive ones—especially when the *same* fund is amply competent to supply the deficiency?

You will please excuse the careless manner in which I have thrown together my suggestions, and attribute it to my haste to reply to your circular.

I am, sir, with great respect, your obedient servant,

CALEB GREEN,
*Clerk West. Dist. of La.*

P. S. If no other person thinks proper to do so, and it is desired by you, I will make suggestions, from time to time, on matters deeply affecting the public interests.

C. GREEN.

To the SOLICITOR OF THE TREASURY.

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J.

OFFICE CLERK U. S. DISTRICT COURT,
*Burlington, Iowa, August* 27, 1842.

SIR: In answer to your circular, dated on the 11th of May last, containing interrogatories in regard to the judicial expenses, and accompanied with copies of the preamble and resolutions of the House of Representatives upon that subject, I would respecfully submit the following:

By reference to the 9th and 10th sections of the act entitled "An act to divide the Territory of Wisconsin, and to establish the Territorial Government of Iowa," approved December 5, 1838, and to the 9th and 10th sections of the act establishing the Territorial Government of Wisconsin, "approved April 20, 1836," it will be seen that the district attorney for this Territory receives the same fees and salary as the district attorney of Michi-

gan, and that the marshal receives the same salary and fees, and the clerk the same fees, as are allowed the same officers for similar services in the northern district of New York, with this difference, that the marshal also receives $200 annually for extra services. For the fees allowed the officers aforesaid in suits determined in said district court, I would refer you to the fee bill of the northern district of New York, in case services are actually performed, which you undoubtedly have on file in your office.

The organic law of this Territory provides that the district court in each county shall have federal jurisdiction, which causes an unnecessary and useless expenditure of public money. I have been clerk of the district court of this (Des Moines) county for about four years, during which time there has been but four or five suits instituted in said court, in which the United States were a party, and most of these were indictments for perjury in proving up pre-emption rights in the land office, all of which failed. The fees of these suits were paid by the marshal, upon a fee bill being made out and certified and allowed by the presiding judge. Fees have also been paid in the same manner in other cases. In other counties in this district, I believe there has not been a suit instituted in which the United States was a party, and only one or two in the other districts in said Territory. Thus, in four years, in this Territory, not more than an average of two suits annually has been commenced, in which the Government was a party, while the expenditure annually in the Territory is from $20,000 to $25,000 for judicial purposes. It may well be asked how this can be. The marshal and district attorney receive (in addition to their fees in suits for actual services, and their salary and the extra compensation of the marshal aforesaid) a compensation of five dollars per diem, and mileage at five cents a mile going and five cents a mile returning for each day court is in session in any one county. In this manner they receive three or four times as much as their salary and other fees. The clerks of this district court in each county also receive five dollars per day during the time court is in session. In this county alone the clerk receives, annually, in this way an average of from $300 to $350.

The grand and petit jurors, in each county, at each term of the court, are paid by the Government, for the first six days' court the court is in session, at the rate of one dollar and twenty-five cents per day, and mileage at five cents per mile going to and five per mile returning from said court. The marshal, also, appoints from one to four bailiffs, criers, &c., at each term, in every county, to whom he pays, as I believe, the sum of two dollars per diem for all the time court is in session, together with the mileage as aforesaid. All these allowances are made out in one account and examined and allowed by the judge, and paid by the marshal. In this name, I understand, there is annually expended, exclusive of the salaries of the judges, marshals, and district attorney, and exclusive of fees in suits for services actually performed, from $20,000 to $25,000. Would it not be much better to so amend the organic law of this Territory as to establish a district court with exclusive jurisdiction in cases arising under the Constitution and law of the United States, with power to hold one or two terms, in each year, in each district, and thus separate the county district courts from the United States district court, leaving the courts as they now exist for Territorial and county purposes? The same judges could perform all the duties, and in this manner the records in federal cases would be kept separate from the common business of said court. This would save annually to the Gov-

ernment from $15,000 to $20,000, and reduce the fees and compensation of offices to their legitimate sphere.

As matters now stand, the district court, in each county in this Territory, takes cognizance of cases in bankruptcy, which will add greatly to the expenses for the current year. These statements I have hastily thrown together, and they are respectfully submitted for your consideration.

Very respectfully, yours,

JOHN S. DUNLAP,
*Clerk United States District Court.*

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L.

OFFICE OF THE UNITED STATES ATTORNEY,
*District of Illinois, (Chicago,) August* 24, 1842.

SIR: I had the honor to receive your circular of the 11th of May last, accompanied by the resolution of Congress of the 19th of March last, in relation to the judicial expenses of the Government, stating that those expenses which in 1824 were $209,000 in 1840 have augmented to $471,000, and requiring an examination into—

1st. Whether any, and if any, what provision shall be made by law to regulate the nature, allowance, and payment of the contingent expenses of the court, or the contingent expenses which should be paid out of the judiciary fund, and especially what provision should be made to abolish all per diem allowance for officers, and whether any alteration can be made advantageously in the length of time comprised in the actual sessions of the court, and the unnecessary attendance from day to day of jurors and witnesses.

Upon these resolutions, you have submitted eighteen interrogatories. I will, in the first place, proceed to give my views upon the subjects referred to in the resolutions, and will then answer the interrogatories submitted by you.

The first question is, "what amendments, if any, are required in the law, of costs?"

In order to answer this question, it will, in the first place, be necessary to ascertain what are the present laws in relation to costs.

The district attorneys of the United States, in the respective Territories of the United States, receive an annual salary of - $250 00

The district attorney of North Carolina - - - 400 00

Gordon's Digest, page 77. Arkansas and Michigan - - - 250 00

Eastern district of Louisiana - - - 600 00

And the district attorney for each of the other districts in the United States receive an annual salary of - - - 200 00

The compensation for the attorney of each district shall be, for each day he shall attend on business of the United States during the session of any district or circuit court, five dollars for travelling from his place of abode to each court, ten cents per mile, and "*such fees in each State respectively as are allowed in the supreme court thereof;* and in the district courts, his fees shall be, for drawing interrogatories, five dollars; for drawing and exhibiting libel, claim, or answer, six dollars; and for all other services in any one cause, six dollars."

The marshals of the respective States and Territories are allowed an annual salary of $200; the same travel and per diem fees as the district attorneys; specific fees for specific services, as enumerated in the 1st section of the act of 28th of February, 1799; and for all services not therein enumerated, such fees and compensation as are allowed in the supreme court of the State where such services are rendered.

The clerks of the circuit and district courts in each State, respectively, are entitled to the same fees as are allowed in the supreme court of the said State, with an addition thereto of one-third of said fees, and the same per diem fees as are allowed to the attorneys and marshals; and in all cases of admiralty the clerk is allowed specific fees for specific services.—(*Gordon's Digest, page* 157.)

Jurors and witnesses are allowed one dollar and twenty-five cents a day, and five cents a mile for travel in going to and returning from court. It seems to me that the fees allowed to the clerks, marshals, jurors, and witnesses are no more than a just and fair compensation for their services. It is true that the fees of jurors and witnesses are more than are allowed in the State courts, but not more than an adequate compensation. The Federal courts, when held within the respective States, are *foreign* tribunals; and it would derogate much from the respect every where entertained for the Federal court if the fees of jurors and witnesses were reduced so low as to render their attendance burdensome. It would be impolitic for the Federal Government to make her courts onerous and unpopular within the respective States where they are held.

As we have no admiralty cases in Illinois, I cannot say whether the fees allowed to the clerk and marshal in those cases require any revision.

I consider the law of costs, as it relates to district attorneys, as most imperfect, unequal, and unjust; and I am very happy that you will have an opportunity of bringing this subject before Congress.

I have referred to the annual salary, per diem allowance, and mileage, received by the district attorneys in going to court in cases in the district court. The specific fees for the specific services of the district attorney, in prosecuting a suit to judgment, amount to $14 50.

In relation to causes brought in the circuit court of the United States, the only provision by law for the costs of the district attorney is found in the act of 28th of February, 1799, giving him *such fees in each State, repectively, as are allowed in the supreme court thereof.*

In the State of New York and other Eastern States, there are fee bills established by law, giving to the attorneys an adequate compensation for their fees in causes prosecuted in the supreme court. But in Illinois and other Western States no fees are allowed by law to the attorney; his fees and charges are the subject of compact between himself and his client. The operation, therefore, of the act of Congress, giving to the district attorney in the circuit court such fees in each State as are allowed by the supreme court thereof, is, that while the district attorney in the State of New York, and other States where they have a fee bill established by law, is paid a just and adequate compensation for his services rendered in the prosecution of suits in the circuit court, in Illinois and other Western States the district attorney receives nothing for prosecuting actions in that court, unless the accounting officers of the Treasury may, in the settlement of his account, allow him a compensation for his services. I will here remark, that, in order to have causes tried before the *circuit* judge, I neccessarily

prosecute all important causes with which the Government is concerned in the circuit court, when that court has jurisdiction; and yet, in the most important and laborious causes in that court, I am allowed by law no fees in action, at law, except a docket fee of $2 50 in each cause, and nothing in chancery suits.

I presume, however, that the Government will allow the district attorney reasonable compensation in such cases.

The law is the same in relation to the fees of the district attorney in criminal cases; he receives such fees as are allowed by the State courts. In the State courts of Illinois, the prosecuting attorney receives a fee of $10, if *he convicts a prisoner* upon an indictment; but if there is an acquittal, nothing. Such fees are no adequate compensation for the labor performed.

I think the United States ought to establish a fee bill of their own in the circuit as well as the district courts, so that the district attorneys may receive a uniform compensation for similar services in all the States. As the law now stands, either the United States attorney receives nothing for his services in the *circuit court* in States where there is no fee bill, or the Government should pay him for his services the same as is customary for an attorney in such cases to charge his own *circuit*. As to the manner of the allowance or taxation of costs, the presiding judge, I should suppose, would be the most competent officer to perform that duty.

The second inquiry proposed by the resolution is, whether any, and, if any, what provision should be made by law to regulate the nature, allowance, and payment of the *contingent expenses of the court*, and the contingent expenses which should be paid out of such judiciary fund.

I have not had sufficient experience to enable me to form an opinion upon this branch of the inquiry. In relation to the abolishing all per diem allowance for officers, it cannot be expected that officers should attend court without compensation. So far as it relates to the district attorney, if the per diem allowance should be abolished, they would probably be allowed to charge the same or an equal amount of compensation by way of counsel fees. A per diem allowance is certainly the most just and economical way for paying the marshal, clerk, crier, and other officers, for their actual attendance upon the court.

The inquiry is made, "whether any alteration can be made, advantageously, in the length of time occupied in the actual sessions of the court, and in the unnecessary attendance, from day to day, of jurors and witnesses?"

The practice in the circuit and district courts is not favorable to economy. The great and most important items of expense in those courts are the fees for the attendance of jurors and witnesses. Being courts of original jurisdiction, the issues, according to the practice in the Western States, are made up during the return term, and the jurors and witnesses are detained until issues are made up, and while issues at law and motions are argued. If Congress should adopt a uniform system of practice in relation to the pleadings, requiring pleadings and the issues to be made up during vacation, similar to the practice that prevails in New York, the court then, on the first day of term, could proceed to the trial of issues in fact, and continue without interruption the trial of all such issues until disposed of. Then the jury and witnesses should be discharged, and the court take up and dispose of motions and issues at law. If such a practice were introduced, it would not be necessary to detain the jurors and witnesses one-half of the time that they are made to attend court. The practice in Illinois

now is, to place all suits pending in court, whether at issue or not, upon the docket, and to take up the causes in their order, as placed on the docket; and if, when a cause is called, it happens to be an issue at law, the jurors and all the witnesses attending in other suits are delayed and continued under pay at a great expense, while long and tedious arguments of demurrers or motions are made and decided.

It is this great defect in the system of the practice of the courts that prevails in the Western States, of requiring the pleadings and issues to be made up during the return term, jumbling together issues of law and of fact and of enumerated and non-enumerated motions, and of detaining the jurors and witnesses in attendance until the decision of the *whole*, that creates the length of time occupied in the actual sessions of the court, and in the unnecessary attendance from day to day of jurors and witnesses; and the only way to remedy the evil is, to adopt a system of practice that shall sift, from the mass of business before the circuit and district courts, the matters of fact to be tried by a jury from the matters of law to be heard by the court, and, after the jury causes are first disposed of, then the jury and witnesses to be dismissed, and the matters of law to be heard by the court. In connexion with this amendment of the practice, the court should be authorized to punish a party who interposes a privileged demurrer or sham plea, by giving judgment against him without leave to amend; and a defendant should be compelled to file, with his plea, an affidavit that he has a good and substantial defence upon the merits, or the plaintiff should be allowed to take an inquest in the cause on the second day of the term.

The act of Congress of the 8th of May, 1792, section 1, and the act of the 19th of May, 1828, declare that "the forms and modes of proceedings in suits in courts of the United States shall be the same in each of the States, respectively, as were then used in the highest courts of original jurisdiction of the same. The judges of the United States courts are thus compelled to adopt the practice of the State courts, and are in nowise responsible for its imperfections. I practised law many years in New York, where rules to plead are entered, and issues are made up in vacation after the return term of the writ and causes noticed for trial; and I know that, under that system of practice, it is not necessary to detain jurors and witnesses one-half of the time that they are detained in attendance on the courts in Illinois, in disposing of the same number of jury trials. Again: where the issue is made up before the term where the cause is to be tried, the parties know before they go to court whether the suit is to be defended, and, if defended, the precise issue that is to be tried, and subpœna the witnesses accordingly. But in Illinois it is quite the reverse; the plaintiffs cannot know whether there will be a defence, and neither party knows what the issue will be. They cannot know what witnesses will be material; but, in order to provide against all emergencies, both parties subpœna all the witnesses who by any possibility may be material. Thus each party is frequently put to great costs in defraying the expenses of witnesses whose testimony is not necessary upon the trial. I have stated but a small part of the evils attendant upon the system of practice which requires issues to be made up *sedente curia* at the return term of the of the writ, and throws all manner of business into a hotch-potch before the court, and compels the attendance of jurors and witnesses until it is all disposed of. Such a practice may have been convenient in the new settlement of a country where the population was sparse and the judicial business small, but there is no reason

why it should be retained at this day in any State in the Union. It produces a most extravagant waste of money and of time. As it could not be expected that Congress would settle the details of practice, I would advise the introduction of a bill to repeal so much of the last-recited acts as require the "*modes of proceedings* in the federal courts to be the same as in the State courts," and, in lieu thereof, enact that the judge of the Supreme Court of the United States be authorized to prescribe rules and regulations for a uniform system of practice for the circuit and district courts of the United States. There is equally as much, if not more, necessity for authorizing the Supreme Court to prescribe rules and regulations for proceedings at law, as in *equity or admiralty* cases.

The act of the 8th of May, 1782, authorizes the Supreme Court, in their discretion, to prescribe such rules and regulations as they think proper for the modes of proceedings in equity and admiralty cases, in the circuit and district courts. The Supreme Court has exercised this power, and established rules for proceedings in equity cases.

I would suggest whether the judicial expenses are not also greatly augmented by the keeping in operation both the district and circuit courts in all the States of the Union. The powers of the district court only vary from the circuit in having jurisdiction of petty crimes, and of revenue, marine, and admiralty cases. Cases must very seldom occur, except in the Atlantic States, where the district court has exclusive jurisdiction. In Illinois I am not aware that a case has ever arisen or been prosecuted in the district court which might not have been equally as well prosecuted in the circuit court, and I presume it is the same in many of the Western States; yet both the district and circuit courts are kept in full operation. At the same time, Congress has frequently passed laws giving to some of the district courts the powers of a circuit court. I would suggest, if Congress would pass a law authorizing the district courts to hold circuit courts, and super-adding to the circuit courts the powers of the district courts, and repeal the law for holding district courts, except in the Atlantic cities, whether all the purposes of justice would not be subserved, together with an immense saving of expense. It has always seemed to me wholly unnecessary that those two courts, separated by so thin a wall of partition, and generally held by the same judge, should be both kept in operation at the same time. It may be necessary on the seaboard, and there alone. A reference to the respective marshals' returns for the ordinary and contingent expenses of both these courts, when held at the same time, will probably show that the expenses of both have been just double the amount of the expense of one, and that all the business transacted in both might have been performed in the same time in one.

To recapitulate, I am of opinion that it would greatly decrease the judicial expenses of the Government and improve the efficiency of the judiciary, if Congress would by law establish the following measures:

1st. A uniform fee bill for the services of all the officers and attorneys of the courts, which shall afford them an adequate compensation for services rendered in each suit in the district and circuit court, to be taxed by the judge of the court.

2d. Authorize the judges of the Supreme Court to establish a uniform system of practice in the district and circuit courts of the United States.

3d. To authorize the district judges to hold circuit courts and give to

such circuit courts the powers of the district courts, and repeal the law for holding district courts, except in the Atlantic States.

I will now proceed to answer, as far as I am able, the interrogatories proposed in your circular.

The 1st, 2d, 3d, and 4th inquire as to the amount of fees of the various officers of the court before and after judgment. I would respectfully answer, that, by the practice of this State, the clerk of the court makes out the fee bill or the bill of costs, in all cases. Mr. James F. Owings, the clerk of the United States court in this district, some time since, showed me his report to you upon the same interrogatories, in which, I believe, he furnished you with copies of the bill of costs referred to in the said interrogatories, to which I would respectfully refer, as containing a much more full and accurate answer than I am able to give.

In answer to the 5th interrogatory, "What are the great items of expenditure at any one term of a circuit or district court?" I answer, the witnesses and jurors' fees.

To the 6th interrogatory, I answer, that compensatory fees not specifically provided for in the fee bill have not been applied for or allowed to me by the judge or any of the officers of the court; but I have always supposed that the Treasury Department would allow me compensatory fees for my services in prosecuting suits in behalf of the United States in the circuit court, as in such cases I am only allowed by the fee bill of this State a docket fee of $2 50. I suppose the Government will, in such cases, allow me the same compensation as is customary for attorneys to charge their clients in this State. I have not yet made out and presented to the First Comptroller my account for the past year, but shall do so in a few days. I do not know of the judge of the district having made any allowance for compensatory fees to any of the officers of the court.

To the 7th interrogatory, I answer, that I have no knowledge of the allowance of constructive fees, or fees for services not rendered.

As to the 8th, I answer, that I have no knowledge in relation to the allowance of double fees, as referred to in that interrogatory.

As to the 9th, in relation to the computation of mileage, I would respectfully refer to said report of the clerk.

As to the 10th, jurors are paid $1 25 per day, while actually attending court; and when summoned and actually attending the circuit and district courts at the same time, they are allowed double fees, or fees for attending each court.

As to the 11th, 12th, and 13th, no costs are paid to the district attorney until the termination of the suit. I do not know whether the clerk and marshal receive their costs as the suit progresses or at the termination. I cannot state what amount of costs has been paid to each officer for each year for the last three years. I have been in office since June, 1841, and all the costs received by me, exclusive of my per diem allowance and travel fee, are as follows:

| | |
|---|---|
| At the June term of the circuit and district courts for the year 1841, I received, for costs - - - - - | $38 50 |
| At December term, 1841, I received, for costs - - - | 42 00 |
| At June term, 1842, I received, for costs - - - - | 118 50 |

These are all the costs that I have received, and these costs are a most inadequate compensation for the labor I have performed. I have had a great many suits to prosecute in the Post Office Department in suits in the

circuit court. I have received nothing except $2 50 costs in each case. I shall, in presenting my account for the last year to the First Comptroller, make a reasonable charge against the Government for my services in suits in the circuit court and in chancery.

As to the 14th and 15th, the costs are made up by the clerk and certified by the judge, and paid by the marshal.

As to the 16th and 17th, I do not know what the contingent expenses of the courts are; the marshal can answer the 16th interrogatory, as he has the payment of those expenses.

The 17th interrogatory was answered by the clerk, who, I believe, furnished the copy of the fee bill required.

To the 18th, I have fully answered.

I have thus given you my views upon the subjects embraced in the resolutions, and answered the interrogatories, so far as I am able, which I hope will be satisfactory. If any further information should be required of me upon the subject, please inform me, and I will with great pleasure give it.

I am, with great respect, your obedient servant,

J. BUTTERFIELD,
*U. S. Attorney, District Illinois.*

Hon. C. B. PENROSE,
*Solicitor of the Treasury.*